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G. P. PUTNAM'S SONS, New York & London

THE SPHERE OF THE STATE  
OR  
THE PEOPLE AS A BODY-POLITIC

WITH SPECIAL CONSIDERATION OF CERTAIN  
PRESENT PROBLEMS

BY

FRANK SARGENT HOFFMAN, PH.D.

PROFESSOR OF PHILOSOPHY, UNION COLLEGE

*THIRD EDITION, REVISED*

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## PREFACE TO THE THIRD EDITION.

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THAT a third edition of this work should be called for so soon is a great surprise to me. It indicates a far more general interest in the ethical aspect of the problems discussed in it than I had been led to suppose. It also shows that the number of intelligent people is increasing who are unwilling blindly to follow the political machine of their locality, but are determined, by study and reflection, to form their own opinions as to what the public good requires.

Surely and swiftly it is coming to be recognized that no intelligent man can be a good citizen unless he strives to find out for himself what ends the institutions of his country ought to accomplish and does what he can to bring about their realization. This is the one condition of a continuously progressive civilization in any country, but especially to-day in our own.

The use of the book in schools and colleges has already far exceeded my expectations, and I desire here to return my hearty thanks for all the criticisms, both favorable and unfavorable, that have come to me from those who have subjected the work to the tests of the class-room. Most of the changes in this edition are due to suggestions derived from that source.

F. S. H.



## PREFACE TO THE FIRST EDITION.

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THIS book is not written primarily for advanced students in Political Science, but for the average intelligent beginner. It consists chiefly of lectures delivered to the senior class of Union College during the spring term of 1893, and is published with the hope that it may stimulate the reader to an increased interest in the problems discussed and help him, in some degree, to their right solution. The endeavor has been made to set forth in a clear and concise manner the ethical principles involved, and to show how, under present conditions and limitations, they are to be applied.

I wish here to acknowledge my special indebtedness to the writings and counsel of my friends and former instructors, ex-President Seelye of Amherst and Professor Burgess of Columbia. I have also received invaluable aid from the able articles in the recent *Cyclopedia of Political Science* edited by J. J. Lalor. The other authorities made use of are, I trust, sufficiently acknowledged in the text. A short list of easily accessible books of reference is subjoined for the benefit of those who may wish to give the subject further study.

F. S. H.

UNION COLLEGE,  
*January, 1894.*



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# THE SPHERE OF THE STATE.

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## CHAPTER I.

### THE TRUE CONCEPTION OF THE STATE.

THE two ideas that lie at the foundation of society are the individuality of man and the organic unity of the race ; and any institution, educational, political, or religious, that ignores either the one or the other of these ideas cannot permanently prosper. History has failed hitherto to bring these two truths into harmonious relations, and, so long as this discord continues, there is every reason to suppose that the conflicts of history will continue also.

The ancient world unduly emphasized the second of these truths, while the modern world equally errs with reference to the first. They have both failed to produce a symmetrical and lofty civilization, because they have tried the vain experiment of disjoining two things that are by nature inseparable. The fact is, these two truths are complementary truths. If either is taken by itself as the whole truth, it is no longer a truth, but by the very operation becomes a falsehood. Man is not merely an individual, or merely a member of the race. For he is both a person, having the rights and duties of a person, and at the same time a part of a living human brotherhood to which those rights and duties are ever subordi-

nate. The true conception of the State gives due prominence to each of these great truths. It recognizes the individuality of man, and gives full scope for the normal development and use of all his powers, strenuously insisting that the perfection of the individual is the perfection of the race. But it also declares that the individual can have no rights or duties that conflict with the good of the whole. While it maintains that the well-being of each person is of great moment, it also asserts that the well-being of the race is of far more importance than that of any individual, and that even life and liberty are not inalienable rights, but must all be given up the moment the race calls for the sacrifice.

The State, therefore, is not a mere collection of individuals. No man, or body of men, can make the State. For the moment a man is born into the family, he is born into the State, and he has no more to do with the one act than with the other. The State is a permanent institution. It is not in the power of man to create it to-day and destroy it to-morrow. Aristotle brings out this truth with great clearness when he says: "It is manifest that the State is one of the things that exist by nature, and that man is by nature a political animal."

There is in reality no such thing as a man without a country. A man alone, out of fellowship with other men, is not a man any more than a hand severed from the body is a hand. The true conception of the State is that of an organism in which each part is at once a means and an end to every other part. Whatever benefits one member benefits every other, and whatever injures one member injures every other. The State is the organic brotherhood of man. Each individual in it is dependent upon all the others, and all the others

are dependent upon him. No man, however much he may try to do so, can live unto himself. As another expresses it: "There can be no blessing nor calamity, no deed of virtue or of vice, no birth nor death, though on another continent, or in a distant isle of the sea, but that brings its living influence to each one of us and to every member of the race."

In a certain sense of the term, the State is one and universal. It is co-extensive with the human race, and nations may come into being and disappear, governments rise and fall, institutions grow old and perish, but the State survives them all. It goes on forever.

In another sense of the term, the State is manifold. That is, there may exist at any given period many distinct divisions of mankind that are properly called States, the number greatly varying from time to time with the course of history.

But just at this point in our discussion we shall avoid much confusion of thought by carefully observing that when we are speaking of the true conception of the State, we are not regarding the State exclusively from either the one or the other of these two standpoints, but pre-eminently as an induction from observed facts. From the observed fact that every man is born a member of a family, and the added fact that he is so made that he must live in a State, we infer that the organization that binds men together and has supreme control over their relations to one another is rightly called a brotherhood. It is not claimed, of course, that any existing State fully realizes this conception. But just as a man approaches perfection as a man in proportion as he realizes the idea of a brother in all his thoughts and acts, so it is with a State. If perfectly developed, a State would be a perfect brotherhood. It is the duty,

however, of every State to regard itself as a brotherhood, and come as near as the given conditions and limitations will admit to its full realization.

Only from the conception of the State as an organism, as a brotherhood of man, can we obtain a true conception of the relation of the State to its individual subjects. We easily see from this conception that the supreme control of all persons and commodities must be with the State ; that there can never be an individual right to anything in the State that is not subordinate to the right of the State. For the brotherhood would not be able to accomplish the ends of a brotherhood, if it did not possess the supreme control over the property and lives of its individual members. If it should in any way lose this control, it would cease to be a brotherhood. The very thing that makes it a brotherhood would have disappeared. Sovereignty, then, is the essential attribute of a State ; and the loss of sovereignty is the annihilation of the State. Unless the State has sovereign control over its subjects, it has no power to compel obedience to its mandates or punish disobedience ; and thus no power to protect the property of its citizens, or defend their lives.

No error is greater than to hold that there is any such thing as a limited sovereignty. It is a contradiction in terms. That only is sovereign which is without limit, and there is no power on earth to limit the State. Complete, unlimited sovereignty over all persons is the one essential thing about a State. If it loses this, it loses itself. It has ceased to be a State, and has become a vassal to some other State. When a State revolutionizes its government it does not lose its sovereignty. Sovereignty is in the people in their organic capacity as a State, and not in the government. It

simply obliges the apparent representative of that sovereignty to give place to the real representative. Each State must be the final arbiter of all its disputes with other States. No international law even can rightly become obligatory upon the subjects of a State until it has been sanctioned by the State, in accordance with the forms which it has itself prescribed for so doing.<sup>1</sup>

Nor is there such a thing as a divided sovereignty. No part of a State can secede from the whole State any more than the fingers can secede from the hand or the arm from the body. If a secession does take place, and has vigor and energy enough to maintain itself, it is not the secession of a part of a State from the whole, but the birth of a new State. There is no division of the sovereignty. The sovereignty of each is one and indivisible. Every State, by its very nature, has unlimited and undivided power over every individual subject within its jurisdiction, over every institution that its subjects may establish within its territory, and over every commodity that exists within that territory.

This is accounted by many "a hard doctrine." They reject it on the ground that it destroys individual rights, and makes a man a slave, a mere machine. But the fact is, the doctrine is the sole foundation and support of human liberty. Take away sovereignty from the State and liberty perishes. The difference between liberty and anarchy is that the one is freedom under law, and the other freedom without law. Deprive the State of the power to make and execute the law,

<sup>1</sup> NOTE.—Unfortunately the word State is often applied in this country to its several subdivisions. The term is not so used in the text. Such subdivisions are more properly designated by the term commonwealths.

and you leave each individual to be a law unto himself. You reduce him to the status of a savage. At no time in history has human liberty been so full and general as now, and yet the sovereignty of the modern State is confessedly the most complete and absolute of which the world has ever had any knowledge. "It exempts," as Prof. Burgess expresses it in his recent invaluable work on *Political Science*, "no class or person from its jurisdiction. It sets exact limits to the sphere in which it permits the individual to act freely. It is ever present to prevent the violation of those limits by any individual, to the injury of the rights and liberties of another individual or of the welfare of the community." It is not too much to say that the liberties of a people are and always have been commensurate with their sovereignty in their organic capacity as a State. In ancient times the sovereignty of the State was usurped by the ruler or by a privileged class, and liberty all but perished. When, however, the idea began to dawn upon the world that every man is a brother, and that the true State is a brotherhood, the sovereignty of this brotherhood began to assert itself and liberty revived. And the more completely this conception of the State is realized among any people, the more absolute their sovereignty becomes, and the more perfect and secure become their liberties.

With these considerations before us it is easy to see the falsity of the doctrine of "inalienable rights." The signers of the Declaration of Independence declare that "life, liberty, and the pursuit of happiness" are such rights. They are, to be sure, the natural rights of every individual, but a natural right is not of necessity an absolute right. All of these rights are ultimately resolvable into a State right. There is no way of



making the lives and property of individuals secure, unless the State has the power to take them both away whenever the welfare of the community requires it. We cannot escape the conclusion, however much we may wish to do so, that everything in the territory of the State belongs ultimately to the State and is always under the supreme control of the State ; in other words, that everything in the State belongs to and should be used for the good of the whole people. Whether individual possession and use can justly be allowed, depends solely on the answer to the question. Will the good of the brotherhood be best subserved thereby? It is not only the right but the duty of the State to abolish all private possession and use the moment any other system will better promote the well-being of the people. Individual ownership and control, if allowed, can never be absolute. No person can ever have the right, for example, to use his property for the degradation and debasement of the community, or for any other purpose than the well-being of himself and all those over whom he has an influence. If a person should bequeath five million dollars worth of real estate in New York City to found and perpetually maintain establishments for the promotion of any crime, by the very act he would have so abused the privilege of individual ownership and control, and so diverted the property of the State from subserving the good of the State, that the State, through its government, should nullify the act of the individual and devote its own, by its own act, to its own well-being and advancement. In the sameway we see that even the children in the State do not belong exclusively to their parents, but to the State. No parent has the right absolutely to determine what his child shall eat or wear, what kind of medicine it shall

have when sick, or where and how it shall be educated. The State alone has absolute control of the children, and should allow their parents to be their guardians for a certain stated period, only when it is clear that such a method of procedure will best develop the children themselves and most advance the good of all.

Having thus set forth the true conception of the State as an organic brotherhood and having described and illustrated at some length its leading characteristics, let us next ask ourselves the question: What light does this conception throw upon the formation of States? How would it determine the boundaries of a State or justify the formation of a new State? In other words, how are we to apply this conception of the State to the world as it is and determine the number and limits of the States that may justly be formed in it?

In the first place, let us observe that the matter of the boundaries of States is not one that should be settled solely by geography.

Undoubtedly the military problems of Europe would be greatly simplified if Spain, by the absorption of Portugal, should extend its territory to the Atlantic; Germany should take possession of Switzerland, so as to reach the western Alps; France should extend itself to the mouth of the Rhine, and the other great States should enlarge their jurisdiction in a similar manner. But it is by no means clear that the good of humanity requires an absorption of the smaller powers. Mere land cannot make a nation. Geographical situation counts for much, but something far superior to locality determines a nation's habitat. True, rivers favor intercourse and mountains interrupt it. But why should the Rhine separate States and not the Elbe and the Seine? Nothing but the course of history has deter-



mined that the Mississippi and the Ohio do not separate nations as well as the St. Croix and the Rio Grande. To accept the doctrine that the territory of States ought always to be determined by natural boundaries would occasion endless strife. Whenever a nation had the power to extend itself to reach a certain river or mountain, it would be adjudged to have the right. A true State cannot be laid out on the map once for all in this arbitrary manner. The earth was made for man, not man for the earth.

It would be equally erroneous to hold that the division into States should be determined solely by race. This is not the case now, and there is no good reason for maintaining that it ought to be so in the future. In ancient times the race idea played an important part in the formation of States. At Sparta and Athens all the citizens were essentially of the same blood, but since the coming of Christianity the case has been wholly different. Changes of frontier have had comparatively little to do with ethnographic tendency. An Englishman of to-day is not a Briton, an Anglo-Saxon, a Dane, or a Norman. A Frenchman is neither a Gaul, a Frank, nor a Burgundian. A German is neither a Teuton, a Celt, nor a Slav. And no one can accurately determine how many races have intermingled to form an American. The fact is, a pure-blooded race nowhere exists outside of some such place as the jungles of Africa. All the great modern States are conglomerates. It may truthfully be said that the most civilized and progressive nations of the world to-day are those whose blood is most mixed.

To hold that family connection is the basis of legitimacy in the formation of States would be to deny the right of expatriation, and bring the world into subjec-

tion to as great a chimera as the divine right of kings. Civilization would suffer an irreparable loss if the Statehood of a people were to be decided simply by their ancestral descent irrespective of their own wishes or the wishes of humanity at large.

Equally untenable is the position that language is the true basis upon which to make the division into States. As Ernest Renan so forcibly expresses it, "Language invites to union ; it does not compel it." No country perhaps is more truly a State than Switzerland, though three or four languages are spoken by its people. On the other hand, England and the United States, though of essentially the same tongue, are clearly not adapted to form a single nation. A people may have the same thoughts and affections and still have no common speech, and they may have far different feelings and ambitions and speak the same tongue. There is something in man much superior to language. He is a human being before he uses language, and it is of comparatively little moment in what tongue he gives expression to his thoughts.

Nor does religion furnish such a standard. It is not too much to affirm that religion is the most potent factor in human history. It is far stronger than locality, or race, or language. But still it is not powerful enough to bind people together into States. In order to see the absurdity of making religion the basis upon which to form States, we need only to think of the confusion and loss that would inevitably result from dividing up the earth into as many States as there are religious sects, and obliging the adherents of each to have their own separate territory and government. In early times to disown the religion was to disown the family and nation. To refuse to swear at the public altar at

Athens was to be no longer an Athenian. Even in the Middle Ages he was not a good Venetian who did not swear by St. Mark. But we must bear in mind that to worship according to the prescribed rites was to them what the taking of the oath of allegiance is to us, or the rendering of military service—not what we now mean by religion. The Roman Empire learned the lesson, although with difficulty, that a man could be a good Roman and still not be a worshipper of Jupiter Olympus. In our time we are seeing it demonstrated that a Catholic may be a good Englishman, a Protestant a good Frenchman, and an Israelite a good American. For religion is fast coming to be considered what it really is, something that must be self-adopted, if adopted at all—an individual matter, that from the very nature of the case can not be determined by any outside power.

In the light of the true conception of the State as a brotherhood, we see at once that the ultimate ground for the formation of States is the needs of this brotherhood. There should be as many particular brotherhoods in the world as the good of the universal brotherhood requires. Geography alone should not determine their number, nor language, nor religion. These are all important and should be duly considered in deciding what the needs of the brotherhood really are. But whenever it is clear that the good of humanity will best be furthered by the breaking up of old States and the formation of new ones, neither the Rhine nor the Alps, neither Gibraltar nor the Great Wall, neither the coffin of Mahomet, nor the chair of St. Peter, should be allowed to prevent it. Every community becomes truly civilized in proportion as it approaches the idea of a brotherhood and it should

use every means in its power to actualize this idea in all its relations to other communities and to its own individual members. If the people of any given locality can far more effectually actualize this idea and help on the civilization of the world by a separate and independent existence as a State, it is not only their right, but their duty to assume the functions of a State and betake themselves at once to the fulfilment of their mission. Let us not fall into the error of supposing, however, that this doctrine teaches that any people have a right to form a State whenever they please, or to attach themselves to a State already in existence as they please. A band of adventurers could not settle on an uninhabited island of the Pacific, even though before undiscovered, and justly form a State there at their own option. The right of any particular community is always limited by the right of humanity. But the right to form a new State or extend the boundaries of an old one is a perfectly justifiable right, if the reign of law and order over the earth will be hastened by so doing—if the civilization of mankind will be most effectually advanced thereby.

The conception of the State as a brotherhood also clearly teaches us the true doctrine concerning the dissolution of States. No people can justly hinder the annihilation of a brotherhood when the good of the universal brotherhood requires it. They have no just claim to continued existence as a State after they have ceased to further the welfare of man, any more than an eye has to be an eye after it has ceased to see, or an ear to be an ear after it has ceased to hear. Nor is there any human right to the status of barbarism. The savages of America and the barbaric hordes of Africa owe it to the civilized world to become civilized. The good

of mankind requires it. If they cannot civilize themselves, they should submit to the powers that can do it for them. If, after all due patience and forbearance have been exercised toward them, and every means of influence and force has been exhausted in the endeavor to induce them to revere and obey law, they still resist, the civilized States should clear the territory of their presence and make it the abode of civilized man. The States that are promoting the progress of mankind should not hesitate to pursue such a policy whenever it becomes clear that the end desired can not be accomplished in any other manner. "There is a great deal of weak sentimentality abroad in the world," says Prof. Burgess, in the work referred to above, "concerning this subject. So far as it has any intellectual basis, it springs out of a misconception of the origin of rights to territory, and a lack of discrimination in regard to the capacities of races. It is not always kept in mind that there can be no dominion over territory or property in land apart from State organization, that the State is the source of all titles to land and all powers over it. The fact that a politically unorganized population roves through a wilderness, or camps within it, does not create rights, either public or private, which a civilized State pursuing its great world mission is under any obligations, legal or moral, to respect." It is clearly against the interests of humanity to allow a few thousand incorrigible savages the right to the possession of a territory which, if brought under cultivation, could support millions of civilized and law-abiding human beings. And nothing is more unreasonable than to suppose that a few trinkets will enable them to make a valid transfer of that right. Those States that most advance the brotherhood of man are the civilized States,

The earth belongs to them for that reason, and not to barbarians. No one can doubt but that the world would be immensely advanced in happiness and civilization if obedience to law and the liberty that comes from such obedience, could be established over every portion of the globe. The continued existence of a people as a State, who show a permanent incapacity to bring about any such condition, is an injury to the progress of humanity. It is not only the right but the duty of the civilized States of the world to assume sovereignty over such a people, and for the good of mankind, as well as the people themselves, force them to submit to the demands of a civilized life.

It would be a crime against humanity for the nations of Europe to allow the savage hordes of Africa, who, according to some estimates, twice outnumber the combined population of North and South America, to continue uninterrupted their degenerate and brutal careers. States that are prosperous and happy are no more justified in leaving the rest of the world to take care of itself than are individuals. They have an obligation to discharge to their degraded and unfortunate fellows, wholly apart from any recompense or gratitude even that may come to them from the people themselves for so doing. The solemn fact is that by far the larger part of the surface of the earth is inhabited by people who have shown by centuries of incompetency their inability to progress, and who will remain forever in stagnation or chaos, unless some outside power comes to the rescue.

History abundantly testifies that the Teutonic nations are the natural founders of States. They are endowed in a pre-eminent degree with the two great qualities of justice and moderation, which especially fit them



for this great work. Almost every leading State of modern times owes its organization to their influence. And if history teaches us anything on this subject, Providence has clearly entrusted to them the mission of conducting the political civilization of the world. In the furtherance of this mission it is both their right and their duty not to leave the barbaric nations, now so fully revealed to their knowledge, longer to defile the earth with their abominations, or even the semi-barbaric, but, without undue haste in assuming power and without exercising the power assumed for any other purpose than the well-being of man, they should, at all hazards, compel these degenerate races to submit to the demands of a civilized life. And they should not hesitate because the people concerned do not extend them an invitation. They are themselves the best judges of the proper time to interfere and are untrue to their mission if they shirk the responsibility of making the decision. If a foot does not do the work of a foot, it is no longer a foot. If it is an injury to the rest of the body; if, instead of helping its growth and development, it perpetually contributes to its degeneracy and decay, it is the duty of the head and all the other organs of the body to unite with the hands in severing the offending member from all connection with the body. It has no right to exist as a foot, except as it contributes to the good of the whole body. Failing in this, it should perish. So it should be with the States that do not and can not fulfil the mission of States. The right to subjugate them is indisputable, and the division of their territory and people among other existing States, is not only a justifiable act, but an imperative obligation. For it can easily be shown that the well-being of mankind, the good of the universal State, would be

injured by their continued existence, and that the gifts of nature to be found among them can be made to contribute far more effectually than they now do to the progress of mankind.

The conception of the State as an organic brotherhood also makes clear and vivid the true ends of the State. The chief and ultimate end of the State, to which all other ends must be subordinate, is evidently the perfection of the brotherhood, the bringing of man here upon the earth to the highest degree of civilization of which he is capable. The annihilation or continuance of a State justly depends on whether it is doing all that can be done under the given limitations to advance humanity to the full perfection of all its powers. Every true State is struggling more or less consciously for the attainment of this end, and has been from the dawn of history. The States of to-day excel all others of which we have any knowledge, because they come far nearer than any of their predecessors to the realization of an organic brotherhood, though centuries, or even cycles, may elapse before the conception is brought to anything like its full fruition.

The other ends of the State may properly be regarded as the means for the attainment of this ultimate end. The perfection of the brotherhood can only be established by bringing about the perfect union of the supremacy of the brotherhood and the liberty of all its individual members. No State can reach perfection except as it realizes perfect sovereignty and perfect liberty, and in this order. Any attempt to reverse this order must meet with signal defeat. The first thing, then, for the State to do is to establish its sovereignty. Before this is accomplished there can be no progress made toward the civilization of its subjects. A rever-



ence for law and a disposition to obey it are the first requisites of progress, and a State first issues out of barbarism when the people begin to recognize this fact. The second thing for the State to do is to make clear and definite the sphere of liberty, and see to it that each of its subjects has the fullest opportunity for the development and use of all his powers. As a matter of fact there never has been, and there never can be, any true liberty among human beings that does not come through the State. Barbaric freedom always results in discord and slavery and stagnation. But the freedom that is the creation of the State, gives peace and liberty and progress.

With such ends as these to accomplish it must be acknowledged that the true State is the grandest of all earthly institutions. For it recognizes every person as a brother and accords him his true place in the universal brotherhood of man. It exempts no human being, high or low, from its jurisdiction. It controls all persons and determines all their mundane relations. It secures for them all their rights and creates for them all their liberties. As it expands its sway over the earth, the larger becomes the sphere of individual opportunity and the higher rises the tide of human prosperity and advancement. The more fully this conception of the State takes possession of the thoughts of men and the more strenuously they labor to bring it to a realization, the sooner will oppression and barbarism disappear and the blessings of a true civilization fill the earth with righteousness and peace.

## CHAPTER II.

### THE STATE IN ITS RELATION TO THE GOVERNMENT.

IN spite of the fact that so much has been written in modern times upon the origin and function of government, it is hardly an exaggeration to say that no term in political science is so commonly misapprehended or so frequently misapplied. It is by no means a rare occurrence for jurists even to speak of the State when they mean the government, and use the word government when they are in reality talking about the State. The consequence is that many rights and duties are ascribed to the State that belong only to the government, and many to the government that belong only to the State.

In order to avoid confusion on this subject and adequately appreciate the fundamental and all-important distinction between the State and the government, we must keep vividly before the mind our conception of the State as an organism, a brotherhood of man. All authority over mundane affairs, as we have seen, is with the State, and cannot rightly be exercised by any other power. The moment the State loses this authority it loses itself. It cannot delegate this sovereignty to any agent. For then the agent would become sovereign and the State would annihilate itself as a State by becoming a vassal. But the State must express

itself in action. It must have some medium of communication with its members and with other States. Otherwise it would fail to fulfil its mission as a State. Just as a man would fail to be a man and perform the duties of a man if he had no way of communicating his thoughts and purposes to his fellows. Government is such a medium for the State. Government, therefore, is not the State any more than a man's words are the man himself. It is simply an expression of the State, an agent for putting into execution the will of the State. The government, therefore, has no authority of itself. All the right it has to represent the State it gets from the State itself, and the State may at any time modify its acts, or, if it wishes to do so, set them aside altogether. The State survives all changes. It cannot be created to-day and destroyed to-morrow, but governments can be. The people of a State can change their government and ought to change it as often as the public good requires.

In the light of these considerations the errors in the false theories of government that have been current in history are easily recognized. Let us notice a few of them.

Take the *jure-divino* theory, or what is commonly called the theory of the divine right of kings. According to this view monarchs are the lineal descendants of Adam, the first and divinely appointed head of mankind. They receive their right to rule, through him, direct from heaven, and this right is transmitted from father to son in the order of primogeniture. It was taught by Filmer, in the time of Charles I., that kings can make no engagements with their subjects which cannot be at any time broken, a positive promise even conferring no actual obligation. The majority of the

monarchs of Europe in their public documents and on their coins give themselves the title of kings *dei gratia*.

The advocates of this theory of government have always based their argument chiefly upon the Scriptures. But the fact is the Scriptures teach just the opposite doctrine. The ancient Hebrews were the first people in history to act plainly and definitely on the principle of popular sovereignty, and to make a clear distinction between their government and themselves as a State. A thousand years before Pericles, by popular vote they chose God for their ruler, and after the death of Moses the choice was re-submitted to the people every seven years. The order of primogeniture among them, before and after they became a kingdom, is far more noticeable for its breach than for its observance. Isaac was not the oldest son of Abraham, nor was David of Jesse, nor Solomon of David. Neither Tiberius, to whom Christ enjoined men to pay tribute, nor Nero, whom Paul commanded men to obey, claimed to be monarchs by divine right. The Roman emperors knew of no such doctrine. They always appealed in their struggles to maintain themselves to the will of the people. The truth is, no man or body of men has ever yet ruled by the direct decree of the Almighty, the multitudes in history who have strenuously maintained such a doctrine, to the contrary notwithstanding. The ruler of the English people even to this day still signs herself "Victoria, by the Grace of God, Queen of England," but no one knows better than Her Majesty that if an attempt should be made to act on the assumption of divine right the most disastrous results to royalty would certainly follow. The people in their organic capacity as States are the only sovereigns. It is not within the power of the people, even though they may strenu-

ously desire to do so, to make the title true of any person or collection of persons they may choose to be their governors. By the divine constitution of things the ultimate responsibility for the nature and character of the government is with the people, and the responsibility can never be delegated by them to any other power.

In the same way we can see in the light of the true view the defects of the *jure-ecclesiastico* theory of the nature of government. The Church, in one sense of the term, is distinct from the State, neither one being dependent upon the other. For man is related to an extra-mundane Being as well as to other men. He is by nature a religious being as well as a political being, and his action in one of these capacities need not and should not collide with his action in the other. But when the Church becomes an organization within the territory of the State, like all other earthly institutions it immediately becomes subject to the State. When it undertakes to dictate the form of government or in any way designate who shall govern, it at once transcends its own clearly defined limits. It usurps the sovereignty of the State, and reduces it to the condition of a vassal. Plainly, then, neither the Pope, nor the representatives of any other religious body, can rightly make and unmake governments. "God has not otherwise ordained the powers that be," as Dr. Hickok so well expresses it, "than by making men social, rational, and free, and thus necessary to be governed; and then in His providence throwing them together where they must institute such government and be ethically bound to respect and obey it."

But the most famous, and at the same time most widely influential, of all these false theories of the

origin of government is the social-compact theory, so earnestly advocated by the philosopher Locke. "Men," says Locke, "being by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent. The only way whereby anyone divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community." Blackstone says, this contract, "though perhaps in no instance has it ever been formally expressed at the first institution of a State, yet in nature and reason must be always understood and implied in the very act of associating together." The constitution of Massachusetts contains these words: "The body-politic is formed by a voluntary association of individuals. It is a social compact." Many other American commonwealths have embodied in their constitutions similar declarations, and some of the foremost American statesmen—Adams and Jefferson, for example—have advocated this doctrine.

As a theory of the State it is, as we have already seen, utterly fallacious. It led to the French Revolution and our late rebellion; and whenever adopted must inevitably tend to national strife and ultimate disintegration. As a theory of the government it is a true doctrine, if we mean simply the form of the government. It is not left to the people to decide whether they will have a government or not, any more than it is left to them to determine whether or not they will live in a State. The government is a necessity as truly as the State, but the people in their organic capacity as a State ought to determine by social compact not only who are to be their governors, but also the mode of their selection and the sphere of



their activities. And they do so to some extent in every State, and have done so in all ages. Even the most absolute despot on the earth is not ignorant of the fact that the people will find a way to dispose of him if he goes beyond certain limits.

The true conception of the government, as we have shown above, is that the government is an organ of the State. It embodies and expresses the State just as language embodies and expresses thought. However good or however bad the existing government may be, it is, nevertheless, for the time at least, the representative of the State. There was not even a shadow of truth in the famous saying of Louis XIV., "I am the State," but it would have been almost literally true if he had said, "I am the government." All just government is of God through the people. For man is so made by his Creator that he must live in a State, and the State must have a government. So long as a man needs hands and feet, so long the State will need a government. And that is the best government which most fully expresses the needs of the State, and does all that can be done to satisfy those needs.

This view of government makes clear the error in the position taken by Herbert Spencer in his *Social Statics* that the object of all government is protection; that its chief and only function is to restrain wrongdoers; that the bad in the State and not the good are the only ones that need a government. The chief and most important function of government is to enlighten the people as to what the good of the State requires. And so long as men are finite they will need a government. The government ought not to be first a policeman and then a teacher, but first and mainly a teacher, and a policeman only if needs be. For we have no

right to suppose that there will ever come a time in this world or any other when men will have no need of government. On the contrary, the more a man advances, the more civilized he grows, the more imperative does the need become. The naked, filthy savage has little need of government, because his wants are simple, and so are his relations to his fellows. But the moment he begins to wear clothes, to build bridges, and engage in commerce, his wants multiply, the more complex become his relations to others, and the greater his need of enlightenment as to what those relations require. All history illustrates this truth. Indeed, the progress of a nation is best measured by the number of laws to which it is obedient. The very idea of civilization is the supremacy of the State. It is that condition of society in which every man lives and moves and has his being for the good of all, and all for each. That is not the best government, therefore, which governs least, but, on the contrary, that which enters most deeply into the real needs and daily interests of its subjects. But the instant a government begins to seek the good of some one individual, or class, and not the good of all, that instant it becomes a usurpation, and the right of revolution becomes a duty. No man, or body of men, can ever have the right of revolution against the State. For such a thing is an impossibility. But the people may easily have the right of revolution against the government. They always have this right whenever the government uses its power for the sole advantage of an individual, or clique, or party, and whenever a change in the government can not be effected in any other manner. But there should never be a resort to arms to effect this revolution unless all other means have failed, and unless the future glory to



be attained for the State shall far outweigh the present suffering. In other words the individuals of the State have never the right to perform any act that will not in the end be a benefit to the State. And if any line of conduct will clearly redound to the public good, they are unworthy members of the State if they do not adopt it as their own, and pursue it with all their powers.

The government, then, being the expression of the State as language is the expression of thought, it will naturally happen that the genius of different States will give rise to different forms of government, just as different races express their thoughts in different ways, and thus originate a variety of languages. It is the purpose of this chapter mainly to unfold and illustrate the ethical principles involved in the formation and administration of government. I shall not, therefore, attempt to discuss at any length the number of forms the government may assume or the advantages and disadvantages of each form. But adopting the classification of Aristotle into Monarchies, Aristocracies, and Democracies as sufficiently exact for our purpose, we can easily see that a State ought to select a monarchic form of government, or an aristocratic, or a democratic, according as its needs require. The form of government, however, is of comparatively little moment provided the government itself voices the will of the State,—is of the people, for the people, and by the best of the people. It is far from the truth to assert that that is the best form of government which is the best administered. That form is the best for any State which most fully attains the well-being of its subjects. It by no means follows that the form that is best under one form of circumstances is best under

another. A given State may be acting under the highest wisdom to change its form with the change in circumstances. Because a State has had a certain form of government—Republican, for example—for a series of years, is no sufficient reason why it should continue that form. It may easily happen that when the circumstances and relations of men grow more complex, and the people in the State come to vary greatly in nationality, education, and religion, a departure from the original form will far more efficiently promote the general well-being. It is reasonable to expect that as the territory of a State becomes more densely populated, the conditions of life more severe, the relations of the people to one another and to other States more intricate and perplexing, the less will become the number proportionally who are capable of deciding what measures are best for the State, or what form of government is best to carry them into execution.

The right of every member of the State to have a voice in the selection, either of the form of government, or the governors, is not an inherent right. The doctrine that all persons have an inalienable right to participation in government is one of those baseless eighteenth-century doctrines that cannot be otherwise justly characterized than as pure fictions. Although strenuously advocated by the leaders of the American and French revolutions, it was utterly repudiated by them as soon as they had an opportunity to put it into practice. No nation of to-day acts on this theory, and it is not at all likely that any people will ever adopt it in the future. The right to vote is a privilege granted by the State to such persons, or classes, as show a capacity to discharge political duty, to use the power the privilege confers for the promotion of the public weal.

The object of suffrage is to continue the government, and to increase and perpetuate its benefits, not simply to keep the peace. It is vain to expect that this object can ever be attained by universal suffrage. The fact is that universal suffrage is as great a chimera as the so-called doctrine of inalienable rights. Even the most democratic governments on the earth deny suffrage to the vast majority of their citizens, and no insignificant proportion of this majority would be physically unable to exercise the privilege even if they had it. The right should be granted to those only who are capable of understanding what the public good requires, and who give satisfactory evidence that they are willing to devote their powers to the attaining of that good. Children, idiots, insane persons, habitual drunkards, and incorrigible criminals should clearly not be granted this right, and there is hardly room for reasonable doubt that an educational test of some sort should be required of every voter. If a person cannot read and write well enough to attend to his own affairs, it is not at all likely that he knows enough to attend to the affairs of the government. Great caution should be exercised in granting the franchise to aliens, especially in localities where they congregate in large numbers. For nothing can be more injurious to the development of a nation's genius and institutions than to have the government of portions of its territory in the hands of persons who are the representatives of a foreign culture and are striving to perpetuate foreign ideas.

It by no means follows that when the privilege of voting has once been granted it cannot be taken away. Every person should be deprived of it who wilfully abuses the privilege, whatever his station, or color, or nationality. For the moment a man ceases to have

either the ability or the disposition to advance the good of the State, he has forfeited all claim to the privilege of voting for the rulers of the State, and it is the duty of the government, acting for the State, to see that the statutes no longer allow him to exercise the right. But all the members of the State should be represented in the government. For no government is worthy of being a government that does not represent the whole people, and strive to meet and satisfy to the best of its ability the actual needs of every individual. The true representative, however he may be chosen, is not a representative of himself, or his district, or even his party, but of the State. And he acts unworthily of his trust if he uses his influence, or casts his vote for any measure that he does not clearly see to be for the good of the whole people.

Much has been said in recent years about "the inviolability of vested rights." The doctrine in some quarters has become a legal fetish. But, carefully examined, it is easily seen to be a false god, in no respects worthy of the worship and service of rational creatures. The doctrine involves nothing less than the annihilation of the State. For if the government by any act could immutably bind the State, then the State would lose its sovereignty and would cease to be a State. It would simply become a vassal to the government. What President Lincoln so forcibly said in his first inaugural address about the decisions of the Supreme Court is true of the acts of every department of the government. "If," said he, "the policy of the government affecting the whole people is going to be irrevocably fixed by the decisions of the Supreme Court the moment they are made, as in ordinary cases between parties in personal actions, the people will

have ceased to be their own masters, having to that extent resigned their government into the hands of that eminent tribunal." The simple truth is that the true government has nothing to do with the inviolability of rights, vested or non-vested. For the government of any given time is the expressed will of the State of that time. It has never the right unalterably to act for unborn generations, or in any way immutably to bind them to a certain course when they come into being. A father, when his son is six years of age, may unalterably prescribe, if you please, what sort of shoes the boy shall wear, or whether he shall wear any ; but that does not give him the right to determine how he shall dress at forty-eight. The kind of food that my body requires to-day may be far from the most beneficial for me twenty years from to-day. I have no right, therefore, absolutely to determine to-day what I will eat nineteen years from to-day, or even one.

If the government of any given period in the history of a State cannot unalterably bind future governments, it follows as a matter of course that no organization that the government allows to be formed within the territory of the State can exercise such a power. No "General Assembly" or "Conference," for example, can ever have the right unalterably to determine the creed of the churches they represent, or their conditions of membership. Subsequent assemblies can always review their proceedings and annul, or modify their enactments, whenever the good of the cause requires it. The trustees of a college, or of any other educational institution, transcend their right, if they accept bequests of any description on the condition that they shall forever be devoted to the propagation of any set of doctrines, however true the doctrines may seem to be in

themselves, or however well adapted at the time to the needs of the community. For the government can never grant to the donors the right to make such gifts or empower those who receive them to act except for their day and generation. The people of the future are alone competent to control the future and if at any time the methods and institutions and notions of the present no longer subserve the good of the people, the State through its government should assert its original right and appropriate the funds by which they are now supported to some other enterprise that does subserve that good.

The right of the State to repudiate the doings of its government in its legislative, judicial, or executive capacity is a divine right. No government of to-day can take it away from the government of to-morrow. Its exercise becomes a sacred duty, whenever a decree of the legislature, a decision of the court, or an act of its executive violates a principle of morality, or in any way becomes subversive of the true interests of the people. Thomas Jefferson never gave expression to a more important truth than when he wrote from Monticello to his friend, Thomas Earl, of Worcester: "That our Creator made the earth for the living and not for the dead, that those who exist not can have no use, nor right in it, no authority, or power over it . . . these are axioms so self-evident that no explanation can make them plainer." . . . The fact that it is "found more convenient to suffer the laws to stand on our implied consent as if positively enacted does not lessen the right of a man to repeal them whenever a change of circumstances or of will calls for it. Habit alone confounds civil practice with natural right."

As a matter of practical politics it will at once be seen



that in the application of this doctrine of government nothing is of greater importance than the qualifications of the governors. None but men of unusual intellectual abilities should be entrusted by the people with the guidance of their affairs in any department of the government, but especially should the State see to it that only the wisest of its members form its constitution and statutes and pass authoritative judgments upon their meaning and application. No other persons are capable of determining what ends the public good requires or what means are necessary for the accomplishment of those ends.

But above all, those who are selected to rule should be men of the highest moral character. If a person does not revere law and love public liberty, whatever his intellectual qualifications may be, he is unfit to rule his fellows. If he is a lover of self and bent on his own aggrandizement, he should never be placed in charge of the interests of the State. Only as he is ready at all times to sacrifice himself and his possessions for the good of the State can he be relied upon in a crisis to be true to the State. The welfare of the three greatest nations of modern times at great epochs in their history was not entrusted to Lincoln, Gladstone, and Bismarck for any other reason than that the people were confident that they had irrevocably surrendered themselves to a great moral purpose and would unreservedly devote all their powers to its speedy and complete accomplishment.

It is the very function of a statesman to give expression to the highest moral will of the State. The questions he has to consider are first of all moral questions,—taxation, education, the treatment of criminals, the tariff, the rights of property, the relations of capital

and labor ; all these and similar matters can never be rightly settled except on ethical grounds. The separation of politics from ethics is fatal to the well-being of any people, and nothing shows more clearly the degradation of a nation or more surely hastens its downfall than the selection of rulers who lightly regard the teachings of morality, either in their private conduct or in their public acts.

The chief reason for the superior excellence of the governmental system of the United States is that its formation was in the hands of jurists, not of landlords, or warriors, or priests. And the secret of its wonderful success is the great confidence the people have in the intellectual and moral integrity of its courts of justice. It is pre-eminently a government of lawyers. And if it is going to maintain itself as such in the future, as it ought, the young men in our schools must be taught that the only jurisprudence that is worth anything is based on ethics, and that all political science that is divorced from morality has no valid ground. Otherwise they will surely and speedily lose their dominating influence in matters of government over the minds of the people, and utterly destroy the sole basis of their power. The people of America rightly look to the legal profession for their officers of State. If its members fulfil in any measure these expectations, they will not regard their profession as simply a means of livelihood, but also and chiefly as the most efficient way of furthering the interests of the people in their organic capacity as a State.

The view of the State and its relation to the government that I have here presented makes clear the difference between a law properly so-called and a statute—a very important difference, but one too often overlooked. A law is a requirement of the State, while a statute is a



decree of the government. The former can never be wrong. The latter is not often unmixed with error, and is ever capable of alteration and improvement. Plato had the true nature of law in mind when he said "all laws come from God. No mortal man was the founder of laws." Cicero is continually insisting that "law is nothing else but right reason, derived from the divinity." And Edmund Burke in his speech against Warren Hastings declares: "All dominion over man is the effect of the divine disposition. It is bounded by the eternal laws of him who gave it." Constitutions and statutes are human products. They represent the attempts of the government to find out what course of conduct, under the given circumstances, will be most in harmony with these unchangeable laws. But so long as legislators are finite and look at things from so many different standpoints, they will be fallible and will often greatly vary in their judgments as to what statutes will most promote the well-being of the people. For this reason positively bad statutes may be enacted, and statutes that are good to-day may be bad to-morrow. A man ought never to disobey a law, but he may at times be called upon to disobey a statute. It is even possible for a person who has given himself and all he possesses for his country to be the greatest of criminals when judged by the statutes, and at the same time the chief of patriots when judged by the laws. A statute, but not a law, may become a "dead letter." If the circumstances to which the statute was originally intended to apply have entirely changed, or if the statute requires the violation of a principle of morality or of a divine command, those who execute the statutes may justly pass it by, and the subjects of the government may justly proceed as though it had no being. A judge is not appointed to interpret and ad-

minister the laws, but to interpret and administer the statutes. He should always assume that the makers of the statutes intended so to frame them as to promote the good of the people. If, therefore, a given statute is capable of two or more interpretations, he should always take the one that in itself and in the application will most further the public well-being, in each individual case giving a strict or liberal interpretation as the best interests of the people require.

The true State is the grandest of all earthly institutions. It embraces in its organism every living human being. It recognizes every man as a brother, and is the true friend of all,—the enemy only of the vicious. No individual is so low as not to be the object of its deepest concern, and no one so high as not to come within its jurisdiction. None are so poor that they do not share in its benefits, and none are so rich that they do not require its constant protection and unceasing support. The true government is a representative and servant of the State. It does nothing of itself. All the power and authority it possesses it gets from the State. Its true mission is to express the will of the State and do all it can to help its members understand and obey that will.

It is false to hold that government-help and self-help are antagonistic forces. The truth is that no man can dispense with either. The whole matter is merely a question of proportion. And that is the best government in which the two forces are most harmoniously blended, and those are the best statutes which allow to every man a full and free opportunity to do his best—to develop himself to the highest possible perfection, and at the same time see to it that all individual advancement redounds to the well-being and glory of all.

## CHAPTER III.

### THE RESPONSIBILITY OF THE STATE FOR EDUCATION.

No man can help being a member of the State any more than he can help being born with a head and a stomach. He is so related to every member of the State that whatever affects them, for good or for ill, affects him ; and whatever affects him affects them. Hence his first and chief need is enlightenment as to what these ever varying relations require ; and the State's first and chief duty, acting through its government, which is its mouth-piece, is to see that this need is supplied. Every finite creature, whatever may be his moral status, will need enlightenment so long as he remains finite. The kind of character he possesses makes no essential difference as to this need. That is the best government, therefore, that does the most that can be done, under existing conditions and limitations, to promote the intelligence and culture of all its subjects.

The protection of society from evil-doers is only an incidental function of government. It disappears wherever or whenever all men, to the best of their ability, are willing to follow reason. But not so with the educational function of government. Instead of diminishing in importance as nations advance in knowledge and virtue, it constantly increases. As the

relations of men become more complex, the greater becomes the need for enlightenment as to what those relations require. No power is so competent to obtain and impart this enlightenment as the true State, and no delusion is so great as that of supposing that men, if left to themselves, will obtain it. The sad fact is that man is vastly more inclined to throw away his opportunities than he is to improve them. Educate him never so highly, and then free him from all external restraint and constraint, and he will degenerate and become more and more like the brute. We ought not to be surprised, therefore, at the historic fact that, where the people are the most highly civilized, there we find that the government has done, and is continuing to do, the most for their education and advancement.

But the true State has not merely the right to assist in the education of its members. We go much farther than this, and firmly maintain that the ultimate control of and responsibility for the education of the people rests with the State. The organism cannot otherwise be brought to its highest degree of efficiency and power. The whole body would soon go to pieces, if the brain did not attend to the development as well as the movement of all the organs of the body. In fact there is no other power to which the State can delegate the matter. For the State knows no earthly power higher than itself. It is the ultimate force in all mundane affairs. It controls all interests, all institutions, and all persons. Every organization of every description within its territory is subject to its jurisdiction. Its rights are the only absolute rights known to us in our relations to our fellows ; and the ultimate responsibility for the discharge of its duties can never be placed upon any other power. Rightly understood, therefore,

there can be no limit to State control of education, and along with this control must also always go a corresponding obligation. It can never justly give up the exercise of the one or avoid the responsibility of the other.

How far it may give way to the locality or to the parent in the matter is a question of expediency merely, and its course of procedure may greatly vary from time to time with the change in conditions. It is never a question of absolute right. The locality gets its power to establish and maintain its schools, just as it gets its power to build its bridges and pave its streets, not from itself, but from the State; and the State is ultimately responsible for the way the locality uses that power. It by no means follows that, if the privilege has once been conferred, it cannot be taken away. It always ought to be taken away if the locality uses its power exclusively to further the interests of a clique, or sect, or party, and not for the greatest good of all. The same thing holds true of every private school or college. No institution of learning of any sort in any part of the State has any right to erect buildings, hire teachers, or confer degrees except by the authority of the people of the commonwealth acting in their sovereign capacity as a State. The moment they are managed solely for the glorification of any individual or church, and not pre-eminently for the public good, that moment the ground for their continuance ceases to exist. They have by their own act become their own executioners. The State should annul their charters, and devote their property to some other purpose that in reality conserves the well-being of all.

The right of the parent to assist in the education of

his child is also a derived right. It is a privilege granted by the State under certain conditions and limitations. No parent has the absolute right to educate his child as he pleases, any more than he has an absolute right to feed him and clothe him as he pleases. The ultimate and final control over every member of the State belongs to the State alone. The State can justly allow the parent to feed and clothe and educate his child only on the ground that the child will at least be as well cared for by that method as it would by the method of direct control.

The ultimate responsibility for the child is with the State, and it should spare no means to make the child as useful a member of the State as the capabilities of the child and the given circumstances permit. If the parent is incompetent or unwilling to do the work delegated to him, he should be treated according to his deserts. But neither the State nor the child should be allowed unnecessarily to suffer. If your eye offends you and will not do the work of an eye, pluck it out and cast it from you; but at the same time see to it that the other eye is not permitted unnecessarily to degenerate, but on the contrary is made the most of for the good of the whole body.

The State should always resist everything that tends to its own disintegration. Above all things it should never injure itself. It does this whenever it allows any of its members singly or collectively to do a thing that is not for the good of the whole people. And just as the whole body is of more account than any one organ of the body, and has the ultimate control of and responsibility for the development and conduct of all the separate parts of the body, so the people in their organized capacity as a State, are of more account



than any one individual or collection of individuals; and can never free themselves, however much they may wish to do so, from the obligation to nurture and develop to the highest attainable degree of usefulness and power the humblest and weakest of their number, as well as the strongest and most capable; regardless, if need be, of local or parental co-operation and approval.

This leads us at once to the position that it is the duty of the State, acting through its government, to establish and maintain a general system of education. It is impossible for it properly to instruct its members as to what the best interests of all require without such a system. This is not affirming that the government must directly *manage* every educational institution within its borders. It may delegate this duty to certain individuals or corporations that show themselves duly qualified for the task. It is solely on the ground that they are thus qualified that the State can justly allow them to hold property, receive bequests from liberally disposed citizens, or gather fees from their patrons for their support.

This general system of education should be adequate to the needs of the State. It should be in quality and character such as will abundantly fit the rich and the poor, the high and the low, of whatever race, or color, or religion, to become the most efficient promoters of the general welfare of which they are capable.

In order to do this, the State, and not the locality or the individual, should fix upon a definite course of instruction to which all the schools within the State, whether public or private, should be compelled in substance to conform, with the fullest liberty to go as far beyond the standard as they may desire, but not to

fall below it. It is neither wise nor safe to leave the fixing of this standard to any power short of the whole body-politic. For otherwise the intelligence of the whole State would not be brought to bear upon the matter; there would be no uniformity in results; and the work of the localities would not be arranged as it ought to be with reference to other and higher courses still to follow. It is a reckless waste of time and energy for us in America longer to disregard the teachings of history on this matter. It is a shame that we in the new world are not more willing to learn from the experience of the old. We are without excuse for continuing to ignore the fact that the people are the most intelligent and civilized, not merely where the most money is spent for education, but where the governmental supervision of the schools is the most complete. This always has been so, is so to-day, and we have no reason to suppose that it will not always continue to be so in the future. We have no instance in history of a people maintaining unaided a high degree of intelligence, even after they have once attained it.

Let us not delude ourselves with the idea that there is in the world, or ever has been, any such thing as self-education. A man's powers are led out by something from without. The mind cannot grow and develop any more than the body without something upon which to feed. The temple of knowledge is closed to him who will not eagerly reach out his hand for some one to help him enter. The strongest and best friend of any member of the brotherhood of man is the brotherhood itself. The true State is by far the most efficient and powerful helper of every member of the State, and is far more interested than any indi-



vidual can be in seeing to it that every person in the organism has a fair opportunity to fit himself for the highest degree of usefulness in it, of which he is capable. The sooner we recognize these facts and act upon them, the sooner shall we be able to rid ourselves of the illiterate millions that now help to rule our country and fashion our laws.

But the State, if it does its duty, will not stop with the fixing of a common standard. It will also secure the proper means for carrying it into effect. It will determine and determine accurately the necessary qualifications of the teacher. The locality will be allowed to select its own teachers; but the preparation necessary for the high office is too important a matter to be left to any power less than the State itself. The locality does not educate for itself alone, but to make of its inhabitants good citizens of the whole commonwealth. If the locality for any good reason is unable to furnish adequate buildings, books, and other appliances for its schools, or to secure competent instructors, the State from its own treasury should make up the deficit. The education of the people should not be left to go "on a blind and aimless way." It should be supervised by one competent authority for one common result. Any education that does not tend to the realization of this result should not be tolerated.

We do not ignore the fact that great natural differences exist among scholars. But these, from the very nature of the case, must be left to the teacher, whose work, while it is the noblest of all callings, is at the same time the most difficult of all arts. Few indeed are competent to succeed in it. But the likenesses among scholars are far greater than the differences; and the ends to be accomplished are sufficiently similar to justify

our position that the State should see that a common standard of efficiency is maintained through every portion of the organism, and that the whole body-politic is not allowed to suffer through the indifference or the misdirected energy of any part.

One of the most efficient agents of modern times for bringing about this desired result is the University of France. The fact that its model, the University of the State of New York, for many years did but little more than gather educational statistics and grant official charters is no reflection upon the institution itself. It should become the inspirer and guide of the whole educational system of the State from one end to the other. It should reach out its helping and guiding hand to every locality in it and bring the vigor and enterprise of the whole people to work harmoniously together for the one common end.

But it is not enough for the State to maintain primary schools only for the benefit of its members. It ought to provide institutions for the higher education of the people as well as the lower. For the welfare of the State depends as truly on the one as the other. In fact, the historic order and the necessary order is first the college and then the school, not the reverse. Great universities were established in Europe and America long before the common school came into being. The common school could not otherwise have obtained competent instructors. The truth is that the desire for an education will not be aroused in the people until they see some examples of its beneficial effects. The presence of a few well educated men and women in a community will do more for the schools in that community than any amount of expenditure or any amount of exhortation. It is always true that the character of

the lower schools is mainly determined by the character of the higher, and that if the higher go down, the lower go down with them. One reason why it is so difficult to have good schools in some parts of our country is that the people do not see the need of them. It seems hardly too much to say that if our schools are ever to become equal to those of Europe, the State must insist upon it that no new teachers shall be allowed to enter the profession unless they be graduates of some normal school or college.

It is by no means necessary that every State should establish and maintain what is commonly called a State university. If the institutions already commissioned by the State are supplying the demands of the State as well as it could be done by the direct control of the State, they may still be allowed the privilege of continuing to supply that demand.

But the work of every college and university within the territory of the State should always be open to the inspection of the State, and should never be allowed to fall below the standard of the State; and if the existing institutions are managed for the rich alone and not as truly for the poor, and are not open to all on common grounds, with free tuition for those who are actually unable to pay it, the State should either compel them to grant these privileges, or should found other institutions sufficiently numerous and accessible to supply this need. The State is recreant to its sacred trusts, unless it sees that all its members, of whatever station, race, or religion, have the fullest opportunity that the existing conditions allow of developing to the highest degree of efficiency all their powers.

Common schools and common universities are the truest levellers of mankind. They do more to bring

young men and women to a proper estimate of their actual worth than all other forces combined. If we ever expect to Americanize the people of our country, we must do it through our schools, and we utterly ignore the teachings of history, if we attempt to do it in any other manner. We make light of our obligations to future generations, if we do not minimize the sectarian and class idea in every grade of education, and magnify far beyond our present conceptions the rights and obligations of the whole body-politic.

Nor is it enough for the State to educate its members in secular matters merely. It does not do its duty unless it furnishes as thorough instruction at least in sound morals as in any other department of knowledge. The State is bound to do everything it can to make its people virtuous. It fails to do this unless it recognizes that every man has a conscience, which is the common bond that unites him to all his fellows, and furnishes all rational creatures with one common standard of conduct in all their mutual relations. Conscience is the power every man possesses of beholding the ultimate rule of all moral conduct. If a being does not possess a conscience, it has not evolutionized far enough to be a man. Conscience, properly defined, never tells a man what to do in particular cases. That is left for his judgment to decide. Conscience always says, "Follow reason." But our judgment must determine, as best it may, what is reasonable. We are put into this world to develop our judgment, not to develop conscience. Conscience infallibly gives us the principle of action, but judgment is our only guide in determining whether or not our conduct conforms to it. All rational creatures agree, when they understand it, that they ought to follow conscience, but

they differ greatly in their judgments as to what particular course of conduct under the given circumstances conscience requires. The State can do nothing to educate the conscience, but it can do almost everything to educate and develop the judgment.

How can the State properly enlighten its members as to how they can fill their true place in the organism, unless it does what it can to instruct them in the best ways of following conscience—that is, acting reasonably—in all their relations to their fellows?

The mandates of the true State are always in harmony with conscience and the statutes of the government of the State are just and wise only in proportion as they approach to the demands of conscience. The whole object of the State, rightly apprehended, is to help its members to the best of its ability in all their varied relations with one another, to act reasonably, to do as conscience requires. The utmost care, therefore, will be taken by the State to provide for its people the best moral instruction possible. It will clearly recognize the fact that all its other efforts at education will be of little avail unless the people are taught adequately to appreciate the superlative importance of their mutual relations to their fellows. And while it will regard the so-called conscientious convictions of its members as simply their opinions or judgments as to whether this or that action is in harmony with the rule given by conscience, and as liable to be wrong as their judgments in other matters, it will do everything in its power to bring those convictions to accord with its own declarations as to what the public good requires, and thus gain for itself the invaluable assistance to the accomplishment of its purpose that such an accordance would undoubtedly secure.

By far the most important phase of the subject before us still remains for our consideration. And though it abounds just at present in many practical difficulties, we turn to it with full assurance that the difficulties are not insuperable, and that the true course of procedure in this matter as in many others clearly reveals itself in the light of the true conception of the State.

We refer to the religious aspect of the subject under discussion, and we unhesitatingly advocate the doctrine that religious instruction, as well as secular, should be given in the schools of the State. But solely as a means to an end—not as an end in itself. Historically, the first family was at one and the same time the first State and the first church. These institutions are all of divine origin. For all men are so made by their Creator that, whether they will or not, they are no more truly related to their parents than they are to one another and to God. It is impossible for them adequately to understand themselves and their relations to one another without the mutual recognition, in some degree at least, of their common relation to God.

The State, therefore, that is true to its mission—the highest well-being of all the people—will use all the means in its power to have its members receive the most competent instruction available on their relation to God as on their relation to one another. It will select and teach those religious principles and ideas that most nearly coincide with its own ideas; not at all, as has already been said, as an end—to oblige its subjects to accept the ideas as their own, or to worship according to them—but solely as a means; to help them to a more perfect appreciation of their relation to their fellows. The wisest government, holding that the true conception of the State is that of a brother-



hood among men, will instruct its people in the principles of that religion that most perfectly actualizes this idea. No government is justified in ignoring the religious convictions of its subjects. For they are the deepest and most pervasive convictions of the human mind. A wise government will do all in its power to show its subjects that its own ends correspond with those of a true religion, and thus obtain the most efficient assistance it can possibly secure towards the accomplishment of those ends.

Unless it does this, it fails to do all that it can do to develop and perpetuate the brotherhood of which it is the representative, and to help every member of the brotherhood to become as great a power for good in it as in him is.

We regard the question of an established church, with houses of worship and ministers supported directly by the government out of the common tax, as a question foreign to our theme. We are here advocating the giving of religious instruction in our public schools solely as a means to an end, and not as an end in itself. No outside power can ever compel a man to adopt a religion as an end, however strenuously it may make the effort to do so. True religion, if adopted at all, must be self-adopted. All true worship, like all true virtue, must be the act of a free being. A wise government will not waste its energies in trying to accomplish the impossible. While it makes due provision for the instruction of its people in those religious ideas that it can best use as a means in order to gain, as far as may be, the approval and support of the religious convictions of its subjects, it will leave entirely to the free choice of every individual the adoption of any religion he pleases and the practice of its rites—provided, of course,

that such practice does not lead him to modes of conduct that are injurious to the ends of the State. The State should never hesitate to suppress at once each and every institution that is subversive of that end.

The argument that no member of the State should be obliged in any way to help support religious opinions which he himself does not accept as the true ones, has already had more influence in this country than it deserves. Religious scruples, like conscientious scruples, are always to be respected. But they are as liable to be false guides as our opinions in other matters, and the State must never allow them to be followed when they collide with the well-being of the people. Many in almost every State have religious scruples against going to war. They claim that all wars are wicked, and that all who engage in them transgress the laws of God and do violence to their own conscience, and no one will question their honesty and piety in so doing. But shall the government for this reason exempt them from taxation in support of a war, or from rendering military service when the defence of the country demands it? A growing number are clamoring against all police regulations on precisely the same grounds, and crying out against all restraints upon their conduct except moral suasion. Shall they be exempt from helping to maintain the laws, and not be punished if they disobey them?

All governments are finite. They may as easily make mistakes on this subject as on any other. When they do they should rectify them just as they do the others. They should not deny their authority, or shirk their responsibility, but they should learn wisdom by experience, and make all the greater effort to avoid making similar mistakes in the future. "The real



difficulty in this whole question," says a careful thinker, "comes from confounding two things radically different. With civil government religion is a means, with the individual conscience it is an end; when, therefore, these two come in conflict, we need not ask which should yield to the other, for each should triumph."

It must be allowed by every careful observer that the present status of our schools on this matter, if not one of complete chaos, is at least one of general discontent. The Roman Catholics complain (and often justly) that our schools are godless. The Protestants differ widely among themselves on the subject, few agreeing as to what they desire. The Catholics want their parochial schools and their share of the public money, while the different Protestant denominations are clamoring for their own academies and universities to which to send their children, if they possess the means of doing so, rather than "patronize" the schools of the State. It is high time that we should acknowledge that in trying to avoid going to pieces on Scylla we are just on the verge of falling into Charybdis head foremost. Who will attempt to deny the assertion that in no civilized country on the globe are the children so ignorant of the Bible as in our own? The knowledge that the average young American, even in our colleges, has of the Scriptures is ridiculously little. He would be ashamed not to know more about Burns or Bellamy.

The truth is we have practically left religious instruction to take care of itself, or have delegated it to the Sunday-school, where any one is often regarded as competent to take a class who can entertain it for half-an-hour and keep fairly good order. How can a child of fair intelligence, after several years of such tuition,

come to any other conclusion than that the people actually care but little about a matter that they allow to be treated in so shiftless a manner, when for the bread-and-butter studies they demand the best hours of the day and the most accomplished masters? Why continue our experimenting longer? Why not adopt and be done with it, of course with reasonable modification, the method that has been so successful in the best schools of Europe? The difference in our form of government is no sufficient reason why we should reject it. Let the number of hours to be spent on secular studies, in the lower grades at least, be limited to three daily. Then let one hour be given to manual instruction, and one to moral and religious. If the regular teacher is not satisfactory to the community for this work, let a nomination be made to the school-board of one who will be. If the different sects in any locality will arrange to do this work in a manner satisfactory to the State, let them have the hour. But by no means let the ultimate control of the matter be left to the churches. The welfare of the State is too dependent upon the sound religious instruction of its members to have its fate determined by the ever-changing fortunes of the war of the sects. Reason is against it. History is against it. If left entirely to the denominations, the Protestants, in the long run, will pay the matter too little attention and the Roman Catholics too much. The State is the only power that can properly conserve the interests of all the people in this matter. This it can do by so managing its schools as to do away with the need of parochial or private schools altogether. Let it make the schools of all grades of such superior excellence in all secular education that complaint in this direction shall be groundless. Then, while leaving

the acceptance of any moral rule or religious principle as an end to the free choice of the individual, let the best moral and religious instruction obtainable follow. Let the State call upon every department of knowledge to furnish it the means with which to fulfil its mission. Let it not shrink, because of this or that temporary obstacle, from its responsibility for so doing.

The true State is nothing less than the organic brotherhood of man. The poorest and weakest of its members is as truly the object of its solicitude and care as the richest and most puissant. It strives to give to every individual the fullest opportunity to do his best for the good of all. In the accomplishment of this great end its first and last and chiefest means is education. This should be so full, so free, and so complete that the people in their organic capacity as a State may ever be able truthfully to say to every human being whose lot has been cast within their jurisdiction : "From your birth up we have unceasingly cared for your well-being, and attended your footsteps with every attainable good. We have done what we could to develop and strengthen all your powers. We have taught you to the best of our ability to know yourself and understand your relations to your fellows. Now, so long as you conduct yourself as a child of the day and not of the night, all the rights and privileges of the brotherhood are freely yours. But if you choose to walk in the darkness rather than in the light, if you trample under feet our laws, if you raise your hand against every man, let the curse of your wrong-doing fall upon your own head, not on ours."

## CHAPTER IV.

### THE OWNERSHIP AND CONTROL OF PROPERTY.

WHATEVER opinions men may hold about our social and economic perils, however greatly they may differ as to the way they should be met and averted, it must be allowed by all, that the idea of property lies at the very foundation of every one of these questions and must enter more deeply than any other idea into their final settlement. Every discussion of these problems that has anything of value in it does, as a matter of fact, centre around this idea. The chief cause of the current unrest and dissatisfaction is the prevailing belief that our present laws concerning the ownership and use of property are based on force and not on justice. Whether this belief is justified by the facts is quite another matter. All I assert is that the present discontent is largely due to it, and that there is no way, with political power so generally distributed among the people as it is to-day, of lessening this discontent except by showing that this belief is an ill-founded belief, or by so altering the laws as to take away its ground and force.

The moment we begin to reflect upon the matter we cannot help seeing that the right to property is one of the most sacred rights of man. We cannot imagine a people so degraded as to be entirely devoid of the idea

of property, and no community has ever enjoyed prosperity, or attained a high degree of culture where the idea was held in slight esteem. Indeed, we may justly measure the progress of a nation in civilization and true worth by the clearness with which it apprehends this idea and the completeness with which it applies it to the ownership and use of every commodity that ministers to human need.

In our search, therefore, for the true conception of property, let us notice at the outset that the ultimate ground of the right to property is not first possession. No man gains a just title to a thing simply because he came upon it before some one else. Of course occupation is one of the *signs* of ownership, but it does not constitute its primary ground. If a person to-day should discover a new island in the Pacific, he would not for that reason alone have a right to undisputed possession. Suppose a band of shipwrecked sailors should be cast upon its shores. He could not justly claim that the fruits and springs and other means of subsistence he found there were exclusively his. The new world was not the property of Columbus because he discovered it, nor did it belong exclusively to the scattered bands of savages that occasionally roamed over its surface. Possession and use of a thing can never be an ultimate ground of ownership. Something else must come in to determine whether or not that possession be just.

Neither is the right to property founded on a decree of the government. "Property and laws," says Bentham, "were born together, and will die together. Before law, there was no property ; take away the law, and all property ceases." The same erroneous view is advocated by Montesquieu. In speaking of the way

men have come to adopt a civilized mode of life, he says : " The political laws gave them liberty ; the civil laws, property." The natural consequence of this doctrine is that what the statute could make, it could at any time unmake. It necessitates the view that there is no ground for the right to property back of the decrees of government. If this were true, justice would have no place in determining the possession and use of property. All would be settled by an arbitrary fiat. Whatever the government decreed would be right. The hard-earned savings of a lifetime might be legislated away in a single night. The most industrious would have no more of a claim upon property as a reward for their industry than the most indolent. The governors might at any time decree that all property should belong to themselves alone, and no voice could justly be raised to call the act in question.

Nor is the real ground of property its utility. True, no community could exist without property. True, no community has been able to thrive without individual property. But that only shows us the result of property, not its ground. All we can claim from the standpoint of utility is that the excellent effects of property corroborate the rightfulness of its possession and use.

The true and distinctive ground of property is labor. Property may be defined as the fruit of human labor. If there were no men in the world, there would be no property. Man alone is the creator of all property. By his labor, he imparts an interchangeable value to things, and this is the beginning of his progress. Man is capable of civilization because he can produce wealth. Other animals are swifter in the chase, better protected from the cold, and better armed for strife. But they can not produce property and therefore can not advance



beyond a certain fixed limit. They can be property, but not the owners and controllers of property. Man, however, because he is active, intelligent, and free; because he is a person, can so impress his personality upon the objects of nature about him by his labor as to acquire a just title to property. In a highly civilized community there is scarcely a clod of earth, or a leaf that does not bear that impress. Property, therefore, is a human product. By his labor man subdues nature and appropriates her to his own use. She thus rightly becomes his property. "Man," says Thiers, "has a first property in his person and his faculties; he has a second, less intimately connected with his being, but not less sacred, in the products of his faculties, which includes all that are called worldly possessions, and which society is in the highest degree interested in guaranteeing to him; for without this guarantee there would be no labor, without labor no civilization, not even necessities; but instead, destitution, brigandage, and barbarism."

Thus we see that the maxim "To the doer belongs his deed," is as true of property as of morals. Whatever a man produces by his own powers is ethically his, and his claim to ownership should be respected against all comers. His natural right to the thing comes from the labor he has expended upon it and is determined by the extent of that labor. Whatsoever laws the civil power may make concerning the possession and use of property, it can never justly ignore this right, and treat it as though it did not exist, any more than it can justly ignore any other natural right.

But a matter of supreme importance to a thorough treatment of our subject is the fact that a natural right is not of necessity an absolute right. The natural right



to property, like the natural right to "life, liberty and the pursuit of happiness," is never an absolute right. These rights, one and all, may justly be sacrificed in case the needs of the State require it. If a man's life and liberty are at the disposal of the State, how much more is his property? The true State is an organism, and individuals are the members of that organism. The State is the unit, the individual a fraction of that unit. The well-being of the organism as a whole is the thing of greatest moment, and should be the point of view from which to treat the various parts. In the normal condition of affairs the lungs and the heart are best developed by developing the whole body. Every human being finds his true place only in the body-politic, and the true sphere for the exercise of his natural rights is in his connection with his fellows in their corporate capacity as a State.

The natural right to property, therefore, is ultimately resolvable into a State right. The people, as an organic brotherhood, are to decide what disposition is to be made of all property. While the good of the individual and the preservation of his right to the products of his labors are of great importance, the welfare of the brotherhood as a whole is of far more importance and should be the point of view from which the laws controlling the possession and use of property are finally determined. The good of the brotherhood as a whole is rarely, if ever, in collision with the best interests of its individual members. The laws of property that the State enacts will seldom need to set aside the natural right to property, but will almost always confirm and strengthen that right. But whatever the laws may be, they should never fail to be founded upon and to accord with the following fundamental maxims :

1. The supreme ownership of all the natural sources of property is with the State. The land, the water, and the air, and all that they contain are the common possession of the race. They are under the supreme control of the whole people in their organic capacity as a State. Inasmuch as the support of every man is derived from the soil, the very existence of the State would be imperilled if the supreme ownership of the soil were not vested in the State itself. That the community, and not the individuals of the community, originally owned the land is one of the best attested facts of history.

Indeed, no State has ever given up that ownership. It has only allowed individuals, under certain conditions and limitations, to possess and use its territory. If a State should unconditionally give up its control, it would thereby cease to be a State. Its sovereignty would be gone. It would lose the very thing that makes it a State; and, instead of one State, as many States as there were individuals would suddenly spring into being. If a State, at any time, adopts the system of individual control of its territory, the titles to the land are derived from the State, and each citizen holds his land ever subject to the supreme control of the State. Whenever the land of the community gets into the hands of the few, to the exclusion and injury of the many, or whenever the good of the State for any reason requires it, these titles may justly be revoked, and individual control abolished. The State is constantly doing it in the exercise of the Right of Eminent Domain, and never was doing it to such an extent as at present. We have every reason to expect that, as the needs of intercommunication increase, and the people become better acquainted with the many injuri-

ous effects of the present system, individual ownership will be much further limited. It is vain to argue that any system of land tenure is of necessity the best system. The State should change its system with the needs of the people, and keep it as nearly as possible in harmony with those needs.

2. The State has the ultimate control of and responsibility for the methods of acquiring property. If the sources of property are under the supreme control of the State, it is easy to see that all property derived from those sources should be under its control also. No individual can take any of the materials of wealth without the consent of the State, and by his labor make them his property, and the State can never rightly give this consent except with the limitation that the ultimate ownership and control of all property is with itself. While the State, therefore, fully recognizes the natural right to property that comes from labor, it cannot regard this right as absolute, but must itself determine in what way and by what means property is to be acquired. It must prescribe the legitimate spheres of labor, and check the useless and wicked expenditure of labor. It should prevent by every means in its power the acquisition of property by trickery, by chance, by counterfeiting, by combinations to force up prices without increasing values, and by immoral practices of any kind whatever. The State acts unworthily of itself, and fails of its high calling, if it does not make and execute such laws as will result in bringing the possession of property, as far as the conditions allow, into the hands of those who create it. Any system of acquiring property that is not based on labor can not contribute to the well-being of man. The only thing that is worthy of reward is work. It is a

sound principle of state-craft, as well as of morality, that he who will not work shall not eat.

Because the government of a State has adopted in one set of circumstances certain regulations for the accumulation of property, and has found them to contribute to the general welfare, is no sufficient reason why they should be continued at another time, under a different set of circumstances. When a country is new, with much to be done and few to do it, laws concerning the accumulation of property may, with reason, greatly vary from what they should be in a country where the conditions are just the opposite.

3. The State is also the supreme authority for determining how property should be used after it is acquired. No individual member of the State has a right to use his property as he pleases. If he pleases to use it for the injury of the State, to degrade and demoralize his fellows, the State through its government should put a limit upon his use of his property and, if necessary, deprive him of it altogether.

The principle of confiscation is a clear recognition of this right. All nations agree that if a citizen uses his property to abet the enemy in time of war, he has violated the first principles of government, and has by this act cut himself off from his normal relation to the community, and deprived himself of the advantage that before belonged to him as a member of that community. The original condition on which the State allowed him the control of his property has disappeared, and his individual right to the use of it has disappeared also.

Any crime of any character constitutes a sufficient reason for the State to limit the use of property, and the more serious the crime the greater may be that

limitation. Incurrible criminals of every description should not be allowed in any degree the free use of property, for they constantly show by their repeated acts of lawlessness their unworthiness of such a trust. Property that is devoted to a good end, and is accomplishing a worthy purpose in one generation may not do so in another. The State, therefore, can never allow property to be devoted for an unlimited period to the promotion of any enterprise. At any time when the State sees that the welfare of the people is not furthered by such an enterprise it should devote the property that supports it to some other end that does promote that welfare.

The doctrine of the inviolability of vested rights rests on a false conception of the State, and before the true conception has no foundation whatever. The true State will never allow any individual, or collection of individuals, to hold and use any given property any longer than such holding contributes to the common good. The moment it ceases to do so, that moment the vested right becomes violable. The government of one generation can never unalterably bind a future generation as to its use of property. It can never grant a franchise for the use of property that a future generation can not annul, or make a contract that a future generation can not break. The word "forever" in any document concerning the possession and use of property is a fiction. The sooner it is read out of court the better. Because a government has once allowed corporations to be formed for the investment and use of property is no reason why they should be continued in existence when they cease to promote the public welfare. It is not only the right but the duty of the State to legislate them out of existence when it be-

comes clear that some other method of holding and using property will better further the well-being of the people. The laws concerning the use of property are just as subject to change as those concerning the acquisition of property, and it is the duty of the State through its government to have them changed whenever it is evident that the good of the organism as a whole requires it.

An excellent illustration of the practical application of this doctrine is described by General Emmons Clark in a recent (July, 1891) number of the *Popular Science Monthly*. He shows beyond question that the average length of human life in New York City has been increased from thirty years in 1865 to forty years in 1890 by the government repudiating the principle that every man may use his property to support himself in any way he pleases, and itself setting the sanitary standard of the homes landlords must provide for their tenants, and tenants must pay for, if they are to be allowed to live in them.

4. What we have said concerning the accumulation and use of property, is equally true of the transfer and descent of property. Here also the State alone has the ultimate and supreme control. With it rests the final responsibility for seeing that they both are accomplished in such a manner as always to keep the possession and enjoyment of property as far as possible in the hands of those who work. For there is no way of making property contribute to the welfare of the community as a whole, or of its individual members, unless the State has the right to determine what power of transfer the holder shall have as between himself and his contemporaries, and how far his acts shall control the use made of his property by the generations that



follow him. All contracts, bequests, deeds of sale, wills, and the like must therefore be subject to the authority of the State, and if made without that authority must be regarded as having no binding force.

The natural right to property that comes from labor implies the right to the free exchange of its products, but there is no such undisputed right to control its descent. To what extent a dead hand should be allowed to hold property or a dead brain to control it is a serious question. It is perfectly clear that no such bequests of property should stand, if they plainly interfere with the progress of humanity. But if the State sees fit to grant the privilege on the ground that labor will be most effectually stimulated thereby it should at best be an exceedingly limited privilege. For no man can possibly foresee what will be the need of all coming generations, and thus he can not in any sense possess a right to say what disposition shall be made of what was once his property to supply that need.

The superstitious reverence that many still have for the dead hand and brain would disappear in the light of a true conception of the sacredness of contracts. Living beings alone can make contracts, a dead person cannot make a contract with a live one, or a live person with a dead one. A father cannot make a binding contract for his own children even after a certain period. Honor and reverence are due to all the worthy who have preceded us, but these things can never rightly be made a matter of contract. The wealth of the past would be of comparatively little value to us if we did not constantly renew it. There can be no moral obligation therefore upon the State to have property descend exactly as the fathers desire. The wealth of any generation is to be used pre-



eminently for the good of that generation, to supply present needs, to establish and maintain the ideas of the present, not to keep alive and extend the exploded notions of the past. Many of the conditions attached to bequests, under our present system, are frequently "more honored in the breach than in the observance." Clauses in wills are often justly declared null and void by the courts, because they require the legatee to do something that is counter to "public policy." The State, acting of course through its government, has not only the right but the duty to assume full control of the bequests and legacies of any institution, charitable, educational, or religious, that is supporting practices or promulgating doctrines that are injurious to the public good, and devote them to some other purpose that meets the needs of the present, and advances the civilization of man.

Under our present conditions an inheritance tax, righteously administered, may reasonably be expected to afford us a measure of relief. The State should never do anything to deaden the enterprise of its citizens, but should encourage in every way the discovery of new and easier methods of providing for the needs both of mind and body. But when for any reason the property of the community has become concentrated into the hands of a few, injury to the public well-being of the most disastrous character is almost sure to follow. So great is the power that the possessors of vast fortunes have over the daily lives and services of great multitudes that when more than one half of the property of the United States with its sixty-five millions of inhabitants is owned by one hundred thousand men, it is certainly time to call the justice of our laws seriously in question.

No tyranny is so dangerous to public life and morals as the tyranny of money. For there will be little virtue left in a people all of whose actions are determined for them by dollars and cents.

It may reasonably be doubted whether any human being in the short space of threescore years and ten, to say nothing of oneshore years, can justly acquire by his labor the control over the lives of his fellows represented by ten millions of dollars, or even by five millions. At all events, one of the imperative needs of our time is an effectual check upon the amazingly skilful and elaborate devices, now so common, of getting possession of the property of the country without rendering an equivalent. There is every reason to suppose that a limit upon the power of inheritance will be such a check. The government, being finite, may often be unable to discover to what extent an individual has brought under his control the property of the country. At his death this is far less difficult. If the courts were empowered to assess and collect an inheritance tax, graduated in amount according to the needs and conditions of the legatees, the evil effects of vast fortunes, continuing in the hands of single individuals, would be largely mitigated.

We should greatly err in our conception of this matter of a tax on large inheritances, if we thought it collided with all inheritance. It is only an attempt to discriminate between just inheritance and unjust. There is nothing in this position that needs to antagonize the views so well expressed by Charles Comté, who, in combating the extreme opinion of some of his contemporaries on this subject, that no inheritance is justifiable, says: "If I wished to refute the errors, borrowed from the Abbé Raynal, concerning the right

of children to enjoy the goods left by their parents when dying, I could not help calling attention to the fact that the family spirit is one of the principal causes of the production and preservation of wealth ; that a man, to insure his children a living, performs labor and undergoes privations, to which no other consideration would induce him to submit. I would point out to my readers that—if the wealth of a man were not to pass to his descendants—he could derive scarcely any real advantage from his property, even during his lifetime. I would show to them, finally, that a nation in which children were excluded from succeeding to their parents would, in a very few years, fall a great deal lower than the inhabitants of Egypt under the domination of the Mamelukes, or the Greeks under the domination of the Turks.”

We may give full consideration to these views and still hold that under certain conditions a limitation should be put upon the inheritance of these “goods,” and that the case of vast fortunes is one of those conditions. In the United States the laws of the several commonwealths in almost every instance already forbid the willing of property beyond two generations. Still greater limitations under the present circumstances would undoubtedly impede the development of a plutocracy and conserve the general good. A large inheritance tax on all sums over a certain maximum descending to a single individual, and a gradually diminishing tax on all sums down to a certain minimum, as the circumstances and needs of the legatees shall warrant, would, in all probability, do much toward mitigating the gross injustice in the distribution of property, nowhere more strikingly and painfully apparent than in those countries where wealth most abounds. For, as

Prof. Fawcett so truthfully expresses it, "every workman must be constantly reminded of the fact that while numbers are unable to obtain a sufficiency of the necessities of life, others have so much superfluous wealth that they are able to squander it in useless and mischievous luxuries, and never devote themselves to one hour's useful employment."

After all I have said on this subject of property I have to admit that there is nothing new about these doctrines. For they are as old as history itself, and were as clear to the mind of the writer of Genesis as they could be to any mind of to-day. The fact is that the first people to discover and to proclaim to the world the true conception of the origin and nature of the right to property were the ancient Hebrews. From the first of Genesis to Revelation the ground of the ownership of property is always labor, and the order of ownership is always first God, then the race, and then the individual. Neither Moses nor Jesus ever put the individual before the race, or in any way called this order in question. That "The earth is the Lord's and the fulness thereof," for the reason that "In the beginning God created the heaven and the earth," was the starting-point of all Hebrew thought, and their next great central idea was that the first pair who were the first representatives of the race, and historically the first State, being children of God and endowed with divine powers, got their right to the possession of the earth and its contents by obedience to the divine command to "subdue it; and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." Individual ownership they always regarded as secondary to race ownership, the only abso-

lute earthly authority over things being the community as a whole, to which individual authority and power were always subordinate.

Only from the true conception of the State as a brotherhood can we derive a true conception of the rights and duties of each member of that brotherhood. Only from the conception of property as ultimately owned and controlled by the State can we come to a true conception of the property right of each citizen of the State. Every man should be taught to have a reverence for property, but it should not be a superstitious or irrational reverence. If his notion of the right to the possession and use of property harmonizes with the biblical conception, it harmonizes with the best economic philosophy and the highest interests of man. Because a thing is old is no good reason, as some seem to suppose, for calling it in question or ignoring its existence altogether. The only fitting watchword for the treatment of property in our day, is "Back to Moses, Back to Christ." Any religious organization, whatever its other excellencies may be, has certainly ceased to be Christian, if it does not proclaim far and wide these doctrines of property, and do all in its power to have them recognized and followed.

## CHAPTER V.

### CORPORATIONS AND THEIR PLACE IN THE STATE.

WHY is it that in every civilized country on the earth in our time one may obtain any morning for a few pennies a full account of all the chief events of the world for the day preceding, when if he should attempt to gather the same information by his own direct effort millions of dollars would not suffice for the purpose? It is because of corporations. Why is it that if a traveller wishes to go from New York to San Francisco or from Paris to St. Petersburg, he can now do it for a few dollars with all the safety and comfort that he could command if he personally owned every inch of the road and personally superintended all its traffic? It is because of corporations. Why is it that in nearly all the cities of the civilized world any sick person—man, woman, or child,—if the case requires it, can now have the service of the best-trained nurses and the most skillful physicians without any compensation whatever? It is because of corporations.

It is hardly too much to say that without corporations the world would sink back into the condition of the dark ages, if not into positive barbarism. For no organized effort at all worthy of our day could be put forth for the progress of mankind in any direction without their aid.



Combination is the watchword of this modern era. It is an age of progress for that reason. Free, unbridled competition is the chief characteristic of the lawless savage, and becomes less and less a reality as men advance in knowledge and civilization. There never was a time in the history of the world when corporations were so numerous and powerful as now, and never a time when they were so much needed, or did so much good. We have every reason to expect that as the world progresses in intelligence and culture, corporations will be far more necessary than they are now and far more influential.

But what is a corporation? What are we talking about when we speak of the actions of a corporation? It is sufficiently exact for our purpose to define a corporation as an artificial person that the State creates to do the work that cannot be done, or so well done, by an actual person. Suppose, for example, the public welfare required a railroad communication between two cities five hundred miles apart. No one man or half-dozen men would have the means to build it. In such a condition of affairs, the State allows a corporation to be formed for the purpose. Small sums of money from many quarters pour in, the road is built, and all reap the benefit.

Though in a sense mythical beings, corporations are, nevertheless, actual members of the community. They are allowed to perform nearly all the acts of real persons, while at the same time they are freed from many of their limitations. In the quaint language of Lord Coke, a corporation "is invisible, immortal, has no soul, neither is it subject to the imbecilities, or death, of the natural body." A little explanation of these terms is desirable. A corporation is invisible, in



the sense that when all the members are present one does not see the corporation. It may sue and be sued, but when the members appear the corporation does not answer the writ. It may own property, but none of it belongs to the individual members. It is immortal, in the sense that its youth and vigor are unaffected by the lapse of time. When its members change it does not change with them, and when they die it does not of necessity cease to be.

Judge Cooley, in his *Laws of Corporations*, summarizes the powers and privileges of corporations as follows: "First, the power of perpetual succession of members; second, the power to sue and be sued in the corporate name and to transact in that name all such business as is within the intent of the grant; third, to purchase, take, and hold property, and to sell and convey the same, except as may be forbidden; fourth, to have a common seal under which to transact its business, and to alter the same at pleasure; fifth, to make by-laws for its government, provided they be not unreasonable or inconsistent with law."

But the thing that is of the greatest importance for us to observe in all corporations is the fact that, whatever their character or mission, they are creatures of the State. Whatever power they have, they get from the State, and they always remain subject to the will of the State. No government can confer sovereign power upon a corporation. For it cannot give to another what it does not itself already possess. Sovereignty belongs to the State alone—to the people in their organic capacity as a State. If the State for any reason should give up its sovereignty to any of its creatures, it would cease to be a State. The government of any generation can rightly act only for the people of that

generation. It cannot bestow upon a corporation any privilege that the government of the next generation cannot take away.

The power to create involves the power to destroy. If the acts of any corporation within the limits of the State are clearly injurious to the public welfare, it is the right and duty of the State, through its government, to amend the charter of such a corporation ; or, if needs be, annul it altogether. It surely can never be an obligation upon the State to continue an artificial person, an acknowledged myth, in existence and power, when it would cut off from itself a natural person—one of its own members—for similar misconduct. “It is certainly not within the province of the State,” says Judge Cooley, “to bind itself by contract to permit those things which are immoral, and which are prejudicial to the State for that reason.”

The State has the right to prohibit at any time the doing of anything that collides with the well-being of the people, whatever vested rights may be affected thereby. If the manufacture and sale of intoxicating drinks, for example, were clearly detrimental to the public welfare, it would be the duty of the State to suppress the traffic, even though such suppression would exclude all those corporations which had been established for the manufacture of such liquors from any further exercise of their corporate powers. The same may be said of lottery corporations and all similar forms of business adventure. To hold any other doctrine on this subject would necessitate our maintaining that a public nuisance could at any time be made perpetual by simply giving the parties responsible for it corporate powers.

Corporations, then, being the creatures of the State,

existing solely for the promotion of the well-being of the State, the attitude of the State towards them ought to be determined by their success or failure to promote this well-being. It should be the purpose of every government to allow to every citizen the greatest freedom of action that is consistent with the highest freedom of all. The government should never undertake to do anything by its own direct action that can better be done some other way. If the corporations it allows to be formed accomplish the work of the State better than it could do it itself, they should be continued. Those that do not should be abolished. It is easy to see, therefore, that the attitude of the State towards corporations may greatly vary. It may encourage their operations in one generation and not in another. It may rightly annul a franchise under one set of circumstances, and restore it again under another.

But whenever the economic conditions of a State necessitate the creation of these artificial persons, whenever the business of a nation becomes so extensive and complex that it cannot be carried on successfully by individual enterprise and can by corporate, a definite and consistent plan should be devised, not only for bringing them into being, but especially for so controlling their conduct that they may be kept to the legitimate realization of their purpose.

It has often been remarked (and there is considerable truth in the statement) that no treatise on corporation law is of much value in this country a half dozen years after its first issue. The reason of this is that no two commonwealths in the Union have the same method of forming corporations, or the same way of treating them after they are allowed to come into being. The confused mass of statutes that exist in many common-

wealths on the subject is annually made still more perplexing by the amendments of the successive legislatures and the conflicting decisions of the courts. No writer, however industrious he may be in gathering the facts, or ingenious in putting them together, can possibly make them into a consistent system. If he should perchance succeed for the moment in doing so, he could not be at all sure that the system of to-day would continue to be the system of to-morrow.

This lack of system has, it is true, some advantages. It allows a greater number of experiments to be tried under a greater variety of conditions, and the evil consequences of a bad experiment to be confined to narrower limits. But whatever may have been true of the early history of our country, the time for such experimentation in this matter has now passed. Our commercial prosperity as a people is very largely dependent upon its discontinuance. The confusion and conflict that now exist throughout the entire Union on this subject can never be made to disappear so long as the legislature of any commonwealth continues "to spawn corporations" upon other commonwealths which it would not permit to do business within its own borders, and so long as it is possible truthfully to say that "the snug harbor of roaming and piratical corporations is the little state of West Virginia."

As matters now are, in some parts of our country corporations may be formed for almost any conceivable purpose, with practically unlimited capital stock, with no tax except an annual one of fifty dollars, with no designated place or time for transacting business, with few limitations as to the liability of the directors and stockholders, and with no required public reports. The only way to prevent the country from being overrun

by an irresponsible horde of these artificial persons, many of them simply seeking "whom they may devour," is to have all the commonwealths strenuously insist upon it that no corporation shall be allowed to operate within their borders that fails to conform in its formation and conduct to the standard of requirements imposed upon all. If worse comes to worse, and the people cannot be protected in any other way from these piratical institutions that are continually flitting about over the country, the national government should take up the matter, and, in the furtherance of its duty "to regulate commerce among the several States," bring these creatures under rational control.

No corporations should anywhere be allowed to come into being solely for the purpose of unloading upon the public an unprofitable business. To what extent nefarious schemes of this sort have been carried on unhindered in the past, is illustrated by the history of the mining industry. Mining companies are not uncommon with a nominal capital of many millions of dollars that have never declared a dividend, and whose stock has never in their whole history had any appreciable value. In many other departments of business, companies are formed solely for the purpose of allowing the initial board of directors to sell out for a mere trifle all the interests of the stockholders to others.

These evils in regard to corporations have been experienced in all lands. In England, where much more has come to be known about the operations of these "promoters of industry" than in this country, it was estimated in 1886 that "there were afloat in the English stock market fully two billion pounds of speculative securities, of which at least a fourth were merely gambling counters." To attempt to regulate this in-

corporation fever by a return to the old system of "special concessions" from the government would be to make the remedy worse than the disease. When the right to organize joint-stock companies was a favor granted by a special legislative act, and not a right conferred by general statute, men made a business of lobbying for charters, and afterwards selling them to the highest bidder. In this way charters were obtained, in many instances, for the organization of "State banks," which came so near sending the whole country into financial ruin. The infinite superiority of our national-bank system should teach us a lesson. Unless we devise some similar system for corporations, and insist upon its being put into actual and universal execution, it is hard to see how the most disastrous business reverses can ere long fail to follow.

The first thing corporations generally wish to do after they begin to operate is to borrow. The statistician of the Interstate Commerce Commission clearly shows that many of the minor railroad lines were built on wholly borrowed capital. Many even of the larger and more powerful roads are bonded for nearly three fourths of their entire capitalization. The power of these artificial persons to borrow should not be left to their own option. It is in this direction that they are most inclined to abuse their corporate privileges. We should never lose sight of the fact that they are the creatures of the State. For they are brought into existence by the State, and the State is responsible for their conduct. It is clearly the duty of the State to confine their power to borrow money to clearly defined limits. Massachusetts forbids a railroad corporation to bond itself to an amount exceeding the total of its paid-up share capital. Every State should have some



similar limit for every class of corporations, and after thoroughly competent experts have determined upon this limit, those entrusted with the execution of the laws should see that it is rigidly observed.

But before the State can, in any adequate manner, regulate the acts of corporations it must abolish secrecy of management. If all companies were obliged to make an annual report of their condition to the government many of the current abuses of corporate power would disappear. Mismanagement of the property of a corporation could not long continue if its actual status were known to the community at large as well as to the ruling majority of its board of trustees. "Experience seems to have demonstrated quite conclusively," says Professor Warner (*Popular Science Monthly*, July, 1890), "that a being at once so vulnerable and so powerful as a corporation cannot afford to keep its affairs entirely to itself, and if it could afford to do so, the public cannot afford to let it."

It might be argued that even legitimate enterprises would be oppressed by the government if their wealth were annually exposed to full public view. But are they not more likely to be fairly treated when the actual state of affairs is fully known than when the people are left to draw on their imagination for their facts? The unjust and unreasonable attacks that are made on corporations are mainly due to the suspicions aroused by the persisted effort of their managers to keep the public in ignorance of their true character. Secrecy awakens distrust. If it does not cloak abuses, it is practically regarded as doing so. Especially is this true in the case of a matter about which the people have pre-eminently the right to full and accurate knowledge. For they are wholly responsible, in their



organic capacity as a State, for the very existence of corporations. In addition, they have no way of punishing these artificial persons for their misconduct as they have in the case of real persons. They ought not, therefore, to allow them the same liberties. There is no other rational way of regulating their conduct and keeping them in due control, than by requiring them to give an account of themselves to the properly constituted authorities as often as the public interest in their condition and character may require.

Furthermore, secrecy of management gives an unjust advantage to the managers of corporations in their efforts to maintain their power. They alone know who the stockholders are, and thus what combinations to make among them in order to keep themselves in control. They alone know when the business is losing and thus can sell their stock at high prices before the public announcement that the corporation is in difficulty. They alone know when the business is rapidly gaining, and thus can get an equally unjust advantage over the other shareholders and the general public in purchasing stock. If corporations were compelled to make a regular statement of their general condition to the State, these evils would be reduced to the minimum. We ought to be willing to learn something from older nations on this subject. In Europe they have greatly reduced the number of fraudulent corporations by this method ; and there is every reason to believe that the time has fully come for us to follow their example.

Another thing must needs be done, however, before we can reasonably expect any permanent progress to be made in the reform of corporations. Directors must be held to a far greater degree of responsibility for

their conduct than they are at present. In nearly all parts of the Union, existing legislation gives the absolute control of corporate enterprises into the hands of bare majorities. The majority of the holders on record at the time of the closing of the books of a corporation have the power at the annual election to choose the whole board of directors, the interests of the minority being wholly at their mercy. If voting by proxies be allowed, it is possible by present methods of book-keeping for a board of directors to take complete possession of a corporation, in which neither they nor the constituency that elected them have any substantial interest. But corporations may be controlled by small minorities wholly apart from a resort to such methods. According to our present laws the ownership of two thousand million dollars, or less than 25 per cent. of the total of railroad capital, insures absolute control of nearly nine thousand million dollars and the entire railroad system of the country. For the total bonded debt of the railroads of the United States is considerably greater than the total of their share capital.

The chief trouble with the plan of limiting the number of votes that can be cast by any one person, the plan now in vogue in Massachusetts as to railroads, is that it can be so easily evaded. Dummy stockholders are manufactured to take the place of real ones with such facility that few are able to tell the difference. Minority representation seems to be the only way of checking these evils. Yet minority representation without proper legislation to support it regarding the action of the directors would of itself be of little value. The State of Maryland and the city of Baltimore once had the power of appointing a minority of the directors of the Baltimore and Ohio Railroad, but the privilege

does not seem to be to them of any real benefit. To make directors personally responsible for the debts of a corporation would probably result in this country at present in a scarcity of such officers. Yet the plan is a just one, and ought eventually to become universal. It is in successful operation in Europe, and we ought to be looking forward to the time when it will be adopted here.

Beyond all question the responsibility of directors should be greatly increased as regards their employees. If a person is injured in the discharge of his legitimate duties, and not through his own carelessness, the company should be held for a reasonable compensation. No corporation should have the privilege of placing the lives of its employees in jeopardy, and then throwing them upon the public if they suffer injury. No corporation in which the public have a direct interest should be allowed to deprive the people of its promised service merely for the sake of getting the better of its employees in a quarrel. If the managers of such corporations can not conduct them without occasioning long-continued strikes and lock-outs, their charters should be annulled, and some other way discovered for carrying on the business. The State should never proceed on the theory that the people exist for the good of corporations, but that corporations exist for the good of the people. No board of directors should be allowed to repudiate the doings of their employees or to refuse to control the action of their subordinates, as has often been done by the managers of our great railroad companies. The severest penalty should be inflicted for such conduct.

It must be acknowledged by all that our present laws with reference to corporations are either antiquated or

wholly inadequate for the purpose. The problems the subject presents are by no means easy of solution. There is much truth in the statement of another that "the development of these ponderous artificial beings (corporations) has exceeded the development of their nervous systems, and the monsters can only sprawl and plunge instead of going forward to a definite end." Yet we firmly believe that if every State should pursue the course outlined above, genuine progress would at once be made toward putting these "monsters" on their feet, and helping them to act in a more sedate and rational manner. One commonwealth, at least, has recently come to itself on this matter. In Massachusetts an annual report to a specified public officer must now be made and sworn to by every business corporation in the commonwealth. Literary, benevolent, charitable, and scientific institutions have made annual reports to the government of their property, income, and expenditure since 1882. Even the exact form of keeping accounts has been prescribed by the government in many cases. For the general law not only requires that the annual certificate of the corporation be "signed and sworn to by its president, treasurer, and at least a majority of its directors," but also that it be "in such form and with such details as the commissioner of corporations shall require or approve."

Inasmuch as corporations are creatures of the State, and require large expenditures on the part of the government to enforce and defend their privileges and powers, the taxation of corporations to meet these expenditures is most rational and just. The basis of this taxation should be their annual net profits. Every artificial person, like every real person, should be required to contribute to the support of the government

according to his ability. If a corporation has no profits, whatever the par value of its stock may be, it has no ability to pay taxes. If it has a large percentage of profit on its invested capital, it has a large ability. Charitable, educational, and religious corporations will not ordinarily have profits, and therefore will usually be exempted from taxation. Publicity of accounts will make it easy to estimate and collect this tax. It should be one of the most important sources of revenue to the State.

Perhaps no subject in recent years has attracted more attention in business circles than the matter of trusts. Another name for them is consolidations or syndicates. A trust is a device for so uniting corporations as to manage them by a single board for their common benefit. The individual corporations making up the trust preserve their own organization, and transact their own business. Trusts are confined to no country, and to no fiscal policy. The recent copper-trust was French, with headquarters at Paris. The salt-trust is English, with headquarters at London. The wire-rod-trust is German. The steel-trust was international. It is a great error, both legally and commercially, to regard trusts as anything else than a distinctly modern product. "It is a mischievous confusion of ideas," says an able writer on trusts in the *Forum* for September, 1888, "to regard as trusts such things as the mediæval guilds, the famous Copper Syndicate, Conrad Roth's sixteenth-century attempt to corner pepper at Augsburg, the Dutch East India Company, and the numerous middle-age monopolies of which they are in some sort types. The trust is the nineteenth-century offspring of over-production, small profits, competition rampant, and labor organizations." The relation of

the State to trusts, therefore, should not be determined by reference to ancient statutes. The decisions of the courts three hundred years ago, or even fifty, have no bearing on this subject. Nor should Lord Coke's opinions about "conspiracies" be regarded as settling their legal status. Trusts bear essentially the same relation to corporations that corporations bear to individuals of which they are composed. Regarded as corporations of corporations, they have a just right to existence, and may become a great means of good.

The growth and development of the modern trust is as natural an evolution in business as was that of corporations. The arguments now used against their formation are precisely those employed fifty years ago against the formation of corporations. Properly managed, they are fitted to do for the great business enterprises of the world what railroad consolidation is doing for transportation, what the Postal Union is doing for the intercourse of nations, what international copyright is doing for literature, what a consolidation of many separate and independent powers has done for Germany and the United States.

It is sometimes argued that the State should destroy trusts, because, by suppressing competition and checking production, they tend to confer upon their managers monopoly powers. But is the suppression of competition necessarily an evil? There are many competent authorities who do not hesitate to affirm "that competition, as now conducted, costs the public a million of dollars, where monopoly, such as is possible under modern conditions, can extort a penny." It is generally true that the poor, who are the ones most injured by unrestricted competition, are the very persons who most loudly denounce trusts. But if



trusts tend to check the wastefulness of competition, it is a very strong point in their favor. Many wise men of to-day will heartily agree with Judge Gray, of the Court of Appeals of New York, who said in a recent decision: "I do not think that competition is invariably a public benefaction; for it may be carried to such a degree as to become a general evil." If trusts are treated as corporations, and subjected to the requirements of all other corporations, as set forth above, their formation and conduct will be fully known to the public. If the profits of a trust become excessive, outside capital will come in, and the trust will disintegrate. Every trust must not only meet the competition that now is, but must forestall that which may be. It must also have regard for other products than the one it is formed to control. If a wheat trust, for an example, makes the price of wheat too high, people will stop buying wheat, and will use other grains in its stead. Trusts are here, and here to stay, at least for the present. If they prove of any service as corporations of corporations, let them abide. A general consensus of enlightened moral sentiment does not condemn giving them a fair trial. Let experience be the final arbiter of their usefulness.

As matters now are, all the machinery of the government stands ready to protect the interests of incorporated capital, and compel it to discharge its obligations; but organized labor has no legal standing in our courts. There is no way for it to act except as a law to itself, and no way for the government to restrain it unless it commits some criminal act. A laborer should have the same legal position as a capitalist, the service of his person being the basis of his contract. The government should imprison labor just as it confiscates capital



whenever it voluntarily breaks its contract, and does not offer a money equivalent. All associations or federations of labor should be required to reorganize as corporations, or to disband altogether. We have arrived at a time in history "when, in the evolution of commercial economy, an entirely new factor is to come into affairs; when organized labor is to take its place in law and the courts by the side of, and be the equal of, capital, with like legal recognition, advantages, encouragement, and with none the less of its responsibilities and liabilities, willing to imperil the liberty of its person as the guarantee for its good conduct." Organizations of capital and organizations of labor are both artificial persons, and the exact counterpart of trusts in the business world are trade unions. These and similar combinations of labor bear the same relation to the workingman as trusts do to the capitalist. They are both organized for a similar purpose, and carry on their operations by similar means. The existence of the one is just as legitimate as the existence of the other, and the privileges and powers granted to the one should be just as freely bestowed upon the other. Organizations of capital and organizations of labor are both artificial, and should be so regarded by the State. In this way only can the State keep them within proper limits, and cause them to contribute to the progress and well-being of the people.

It is indispensable to the success of the method of dealing with corporations outlined above that every State should have a commissioner of corporations. Such a commissioner of corporations was established in Massachusetts in 1870. No incorporation is complete in that commonwealth until this officer is satisfied that the law has been complied with; and no

corporation organized under general or special law can begin the transaction of business until the whole amount of its capital stock has been paid in, in cash or its equivalent, and a certificate of the fact filed with the secretary of the commonwealth. Experience abundantly testifies that the let-alone policy of dealing with corporations, now so common, is most harmful to the public welfare, and ought at once to be abandoned throughout the entire country. As Commissioner Tarbox in his report for 1886 expresses it: "The plea that the corporations, if left to themselves, will faithfully perform their trusts and do full justice to their policy-holders, and that therefore there is no need for legal protection to either, is not sustained by reason or facts."

Of the success of Massachusetts in her attempt to regulate the conduct of corporations there can be no reasonable doubt. The railroad commissioners of that commonwealth in a recent report (1886) tell us that "the books, papers, and accounts of the railroad corporations are as open to public scrutiny as those of the State or city governments; and yet not a single one of the evils so frantically predicted has ensued!" Similar statements to the same effect from the reports of other commissioners might be quoted almost without limit. Mr. Holmes in an able paper on the subject in the *Political Science Quarterly* for September, 1890, declares it to be the "well established policy" of the government. All reasonable public concern for the management of corporations, he does not hesitate to affirm, has been disposed of in that commonwealth by this system.

These Massachusetts commissioners, being special students of corporations, are, moreover, expert advisers

to the legislature on all questions coming within their jurisdiction. For the commonwealth acts on the theory that it is unreasonable to expect that the average lawmaker will take time, even if he has the ability, adequately to inform himself on such matters. All complaints from every quarter concerning the violation of these regulations regarding corporations, are presented to these commissioners. In the civil courts justice is meted out only to those who can pay for it. For there the rich and the poor are not on an equal footing. But before this commission the humblest person in the commonwealth is permitted to state his grievance, assured that redress, if he deserves it, will be obtained for him without unnecessary delays and without cost.

It is difficult, if not impossible, to overestimate the importance of the proper regulation of corporations by the strong arm of the State. For all classes and conditions of men come far more constantly and vitally than they think within their sphere of influence. We can hardly get a quart of oil to light our dwellings without submitting to the terms of a corporation. The bread we eat is usually brought to our doors by a corporation, and the rates we pay for the water we drink are very likely determined by a corporation. The church we worship in is owned by a corporation, and the grave in which we shall be buried when we die will probably be bought of a corporation.

If the people have a right to control anything, they certainly have the right to control their own creations. If the government they choose to represent them has any duty to perform for the public good, it certainly has the duty of regulating the conduct of these artificial beings. For corporations have no souls and therefore no consciences. They are by nature freed

from the restraints that hold in check the evil impulses of ordinary individuals. They are tempted to perform and are constantly performing acts that an individual would scorn to undertake. They can have real individuals sent to prison for interfering with their prerogatives, but they themselves can escape all such punishment. They can oppress without themselves being liable to suffer, and can tyrannize without being themselves exposed to any of the perils of a despot. Unchecked by legislation, these artificial persons may plunder and devour the substance of the people almost without restraint and without limit. But regulated and controlled by the State in accordance with the principles set forth above, they ought to become and will become one of the greatest agencies of this or any other time for spreading abroad the blessings of modern skill and industry over the whole earth. Every class and condition of mankind will feel their beneficent influence.

## CHAPTER VI.

### TRANSPORTATION IN ITS RELATION TO THE STATE.

IN 1844 the minimum cost of sending a letter from New York to Buffalo, or any similar distance in the United States, was twenty-five cents. Now one may send a message from any hamlet in Maine to the extreme limits of Alaska, a distance of over 5,000 miles, for a single penny. When Gladstone first entered public life, the ordinary postage on a letter from London to New York was fifty-eight cents. Now five cents will carry the same document from Sacramento to St. Petersburg in much less time and with far greater safety. It is idle to attempt to estimate the economic effects of our present postal service upon all departments of modern life. As Arthur T. Hadley expresses it in an able paper on the History of the Post Office: "Our whole economic, social, and political system has become so dependent upon free and secure postal communication, that the attempt to measure its specific effects can be little else than a waste of words.

The changes that have taken place in the transportation of persons and commodities within the last generation are equally striking. Fifty years ago it took nearly three weeks to go from New York to Chicago, and cost upwards of one hundred dollars. Now the

ordinary fare is about twenty dollars and the time less than thirty hours. The freight rates between these two cities in 1850 were several times as high as at present.

The success or failure of almost every enterprise is to-day dependent upon the cost of transportation. The location of cities and the development of business are mainly determined by the railroad and steamship. The determination of Chicago early in her history to have every railroad in the region pass through her limits, is one of the chief reasons why she has so easily and so quickly eclipsed all her rivals in population and wealth, and become the second city on the continent. Rapid and cheap transportation has more than compensated for her great natural disadvantages, as compared with some of her neighbors. On the other hand, large and prosperous cities have gone into premature decay through a slight change in the cost of transportation or in the method of carrying on the traffic. Whole districts of the country could easily be depopulated by materially raising or lowering the transportation rates. What would become of the wheat fields of Dakota if the rates to Liverpool should be doubled? How long would some of the iron and coal mines of Pennsylvania continue to be operated, if governmental protection should be removed and the rates from Europe be reduced one half?

In every State the activities of men may be divided into two classes—competitive and non-competitive. The production of articles of human necessity from the soil, ordinary trade, and the communication of knowledge belong by nature to the former class; while those activities that spring from transportation naturally belong to the latter. Those who control these non-competitive activities control the distribution of

commodities, and thus determine their value and use. Generally speaking, after the avenues of intercommunication have once been established they can not successfully be duplicated. Either there is no need of doing it, or the injury that would come to other properties would not justify the State in giving the permission to do so. The way to obtain control of these means of transportation is something quite distinct from creating them to begin with, or enlarging and perfecting them after they have been once brought into being. The great instrument for securing this control in our day is the stock exchange, where success generally depends not upon real values, but upon a person's ability to so manipulate stocks as to have the fluctuations of the market in his favor. As a writer in the *North American Review* puts it: "With the power of great capital, with facilities for 'rigging' the market in its various forms by lying reports, by withheld reports, by making money plentiful or scarce in the loan market, he [one] can produce his own fluctuations, and get the benefit of them." Many of the choicest transportation properties of the country have already been thus captured; and the wealth and political influence that their possessors have acquired by the process have beyond question seriously impaired the suffrage powers of the people, clogged the wheels of free legislation, and thrown suspicion upon the impartiality of the courts.

Apart from the post-office almost every system of transportation in this country has been left to take care of itself. With our almost boundless domain we could afford for a while to bid defiance to the economics. But the time has come for us to arouse ourselves to the fact that no new laws of humanity have



been made for our exclusive benefit. We can not with safety longer ignore the experience of our fellow-mortals in other lands on this subject. For the problems that now confront us are confessedly among the most serious and difficult of our time, and their proper solution will certainly tax to the utmost all our powers. But the great question of the future in regard to transportation is not alone as to what men and agencies shall conduct it, but as to whether it shall be so conducted as to continue to contribute to the building up of enormous private fortunes, or with supreme and ultimate regard for the general prosperity of the people and the highest good of all.

The only power that has absolute control of all the means of transportation within the State is the State itself. As the organic brotherhood of man it is sovereign over all acts and persons. It alone has the right to determine what avenues of intercommunication shall exist within its borders and how they shall be operated and controlled. It alone is ultimately responsible for making these means of intercourse the best the given conditions will allow, and for so directing their use that they shall not advance the interests of any one class alone, but the interests of all. How it can best do this the people of each generation must determine. The answer given to the question to-day is not of necessity the answer of to-morrow. It may allow private enterprise to take charge of the matter at one time and adopt direct governmental control at another. In short, it will ever hold itself open to a change of policy whenever the economic conditions of the time may warrant.

As to what the relation of the State to the post-office in our day ought to be, there seems to be but one

opinion. Direct governmental control has for many years been the policy of all the civilized States of the world, and the tendency of the present is decidedly in the direction of enlarging its sphere of action rather than curtailing it. The only questions we need seriously to discuss at present regarding the post-office are: what should be the financial aims of the government in its management, and what means should it adopt for realizing those aims? The government might manage the post-office so as to accomplish any one of four ends: to raise a revenue, to make business profits, to pay expenses, to further the general interests of the public. The first of these ends may be at once eliminated from consideration. For no civilized State of to-day would think of raising its taxes by such a method. It would be far more reasonable to tax the people for the support of the post-office than to tax the post-office for the support of the people. One of the primary objects of the modern State is to educate the people by every means in its power, and to make the distribution of intelligence as nearly as possible open to all. We can therefore eliminate the second of these ends. The true end in the management of the post-office, as in every other matter of the State, is the furtherance of the best interests of the people. This would generally be accomplished by making the financial aim of the post-office the payment of expenses, but there are some important instances where it could not justly be made the chief end. "In countries like the United States and Russia," says Professor Hadley in the paper referred to above, "there are strong social and administrative reasons for establishing long routes over sparsely populated districts. These involve a large increase in expense, with no corresponding increase in

revenue, whatever rate of postage is charged upon them. They have often caused a deficit in Russia, and almost always in the United States."

The postal service of the United States, while noticeably defective in some respects, lacks but little of coming as near to the realization of the true aim of such a service as any in existence. No department of the government is more efficiently administered, or more truly contributes to the advantage of the public. Forty years ago the annual cost of the entire service was a little over five millions, or about equal to the present business of the New York City office. When Benjamin Franklin was Postmaster-General tradition has it that he carried the entire general archives in his breast-pocket. Now there are sixty thousand postmasters, one hundred and seventy thousand persons engaged in the service, and the annual cost of management is upwards of sixty-six million dollars. Taking into due consideration its enormously rapid growth and the inexperience of many of its officials, its freedom from corruption and the general efficiency of its service make it worthy in almost every particular of the greatest commendation.

But legislation in support of this service has not at all kept pace with its growth. Without the railroad our entire domestic postal system would be valueless, but as matters now are the railroad has the system completely at its own mercy. Ex-Postmaster-General Dickinson in the *North American Review* for October, 1889, concludes a review of the legal status of the post-office with the statement: "In the present condition of legislation, then, any company now carrying the mails may refuse to continue its contract and may stop the mails on any great trunk line with impunity." All a Post-

master-General of the United States can do if a railroad company refuses to carry the mail at a reasonable compensation is to contract for carrying the "letter mail (section 3999 of the Revised Statutes) by horse-express or otherwise, at the greatest speed that can reasonably be obtained, and for carrying the other mail in wagons, or otherwise, at a slower rate of speed." In the eyes of any one but an American, the abject dependence of so great a public institution as the post-office upon the personal greed of every railroad manager in the country, is not only lamentable but ridiculous.

The transmission of money through the post-office in recent years aggregates vast amounts. In 1888 the total disbursements and receipts reached nearly two hundred and sixty-five million dollars. The present money-order limit is \$100. It is the opinion of many experts on this subject that we should have no limit, and that the post-office will not be made what it ought to be until we have established postal savings banks. The people, they argue, should have for their money all the security they have for their correspondence and at its lowest cost.

One of the chief needs of the post-office to-day, according to ex-Postmaster-General James, is the application to the department of "business principles." "We can expect," he says in the *Forum* for October, 1888, "no great or lasting reform in the postal service until that branch of the government is absolutely divorced from politics and the work of the office is run on business principles,—the best, in fact the only, way to put a stop to this (the present) condition of affairs, is to cut off the supply of 'political pap' by Act of Congress, making places in the post-office permanent during good behavior."

Why the State should empower the government to take control of the transmission of letters, periodicals, and money, and not of telegrams, it is wellnigh impossible to conceive. In every civilized land except in the United States the telegraph has long since passed under governmental management, and the expediency of the arrangement is unquestioned. In England as soon as the government discovered the importance of the telegraph to the welfare of the nation, it bought out every existing line, although at great expense, and assumed absolute control of the business. Considered simply as a business transaction, the bargain has not been a bad one for the government, notwithstanding the fact that the number of offices has been trebled and the average cost of a message reduced to sixteen cents. "It is amusing," says Mr. Preece in a paper read before the Society of Arts, in London, May, 1887, "after this length of time, to read the arguments that were advanced against the absorption of the telegraph by the State. Every reason has been proved wrong, every prophecy has remained unfulfilled. I can say this with good grace, for I was one of the prophets."

When our Continental Congress first assumed control of the postal system of the country, it declared its function to be "the communicating intelligence with regularity and despatch from one part to another of these United States." Yet the one agency that easily outstrips all others in performing this function it still continues wholly to ignore, leaving the most important and powerful means of communicating intelligence to a gigantic monopoly virtually in the hands of one corporation, if not of one man, who exacts millions of dollars from the people in excessive and unreasonable charges every year. We get some conception of this exaction

when we reflect "that from 1867 to 1883 (both inclusive), the shareholders of the Western Union Telegraph Company received \$34,000,000 in cash dividends in addition to stock dividends of \$25,817,198."

When our national government is urged to assume direct control of the telegraph it is not urged to do anything new. The first line of telegraph erected in this country was erected by a Congressional appropriation of \$30,000, "to test the expediency of the telegraph projected by Professor Morse," and was operated by the Postmaster-General for three years as a branch of the postal service. It is simply urged to return to the unfortunately abandoned policy of 1844, to do what the government of every other civilized land is doing to make the transmission of knowledge among the people as speedy and inexpensive as is within its power.

Furthermore, the telegraph in all civilized lands has now become an indispensable means of carrying on the government. It is the chief agency by which the central government communicates with all its separate parts. By it and by it alone can the government instantly acquaint itself with the course of events in every part of its territory and at once exert its authority in quelling riots and enforcing obedience to its laws. Without its aid the officers of the government would often be wholly impotent to detect the whereabouts of criminals and check their flight to quarters of the earth wholly beyond their jurisdiction. No one can fail to see that where the government is left dependent upon any outside agency for its information, it may easily be kept in ignorance of the actual facts and may often unwittingly be led to use its power for the injury of its subjects rather than for their good. Every government, therefore, in this modern era, should have direct



control of a system of telegraph that nothing may prevent it from ministering to the welfare of all the people in the most thorough and efficient manner.

The considerations we have adduced in favor of governmental control of the post-office and telegraph apply with almost equal weight to any agency for the transmission of intelligence among the people that comes to be indispensable to their commercial and social life. The telephone is fast becoming such an agency. The total number of receiving telephones in use in the United States, according to the census of 1880, was 54,319. In 1891 the American Bell Telephone Company had 483,790 instruments under rental, and paid its stockholders over a million and a quarter in cash dividends. Together with its subsidiary companies it to-day represents a capital of \$80,000,000. The best way, if not the only way, to bring this enormous power into subserviency to the people at a reasonable cost is by direct governmental control. The franchises it receives from the people in their organic capacity as a State ought to be used for the good of the people. The history of the Western Union Company gives us no reason to expect they will be so used in the case of the telephone any more than they have been in similar instances in the past. On the contrary we ought to expect that the rates will continue to be enormously out of proportion to their cost ; that the monopoly power already acquired will be used to swell the coffers of its holders, regardless of the extent to which the people suffer. Many believe that nearly every device known to the legal profession has been resorted to to prevent a decision by the courts of the original ownership of the telephone patent. For the American Bell Telephone Company long ago



bought out all the actual contestants, and the time of the expiration of its monopoly of the telephone business is legally seventeen years from the date of this decision. The expiration of this patent ought to have come in 1894, but actually the people will be plundered by its continuance till at least 1908.

The telephone has already become indispensable to the efficient administration of the government. In all the great centres every moment orders are passing over its wires whose failure to reach their destination might easily throw the workings of the government into confusion and greatly jeopardize the security of the people, if not their property and lives. On what principles of common prudence even can the State allow the government to remain in complete dependence on some irresponsible outside power in a matter so essential to the domestic and commercial welfare of its people and the efficient execution of its laws?

When we come to the consideration of the transportation of persons and commodities the same principles apply as in the transmission of intelligence.

Every watercourse, whether natural or artificial, in every nation is under the supreme control of that nation. The right of private navigation is a derived right and may at any time be taken away if the interest of the people will be best conserved by so doing. It is clearly the duty of the State to do everything in its power to improve its natural highways and develop new ones wherever the commercial and social life of the people will be furthered thereby.

If, for example, a ship canal from the Hudson river to the great lakes would unquestionably promote the commerce of the country and be a great national blessing, the national government should not refrain from

the undertaking, even though the work might be too heavy to attract private capital and a generation might pass away before the State began to reap an adequate pecuniary reward. By all means let the necessary financial aid of the United States be given to the languishing Nicaragua Canal project. For the most careful students of the matter agree with John Sherman that "it would be a wise act of public policy, second in importance to no other in the history of our country, and a general benefit in promoting our commerce and industry in every section."

As a merely financial operation the United States would be justified, they tell us, in aiding the building of this canal. But it ought to be done as a work for the people of America and the world, apart from the question of its financial advantage. If it is not built under the control of the United States it probably will be by some foreign maritime power, and thus at any time it might become a menace to our interests as a people, instead of a peaceful highway for the world's commerce and a monument to American statesmanship. The political history of the Suez Canal ought to teach us a lesson.

Beyond all question, the most important agency in modern transportation is the railroad. "Of all the factors that have contributed during this century," says a well-known writer, "to the growth of wealth, to the increase of material comfort, and the diffusion of knowledge, the railway plays the most important part. . . . In its aggregate it represents a larger investment of capital than any other branch of human activity ; and the service that it renders and has rendered to society is, both from industrial and commercial points of view, greater than is rendered by

any other single service to which men devote their activities."

Roads in all ages have been the bearers of civilization. The Romans extended their sway over the then known world quite as much by their roads as by their military prowess. In our day roads in the shape of railways have diffused the benefits of civilization over nearly the whole earth. Space is practically annihilated. Even the necessities of life in one portion of the earth may come from parts the most distant, the bread of the average Londoner being brought from Dakota or Crimea, and the fruits on his table from California or Ceylon.

The amount of capital that has been invested in railroads during the last fifty years is almost beyond our comprehension. Even in 1881 it had reached the enormous sum of \$13,000,000,000, almost half of all the debts contracted during the last few hundred years in carrying on all the wars and constructing all the internal improvements of all the nations of the earth. Mulhall gives the estimate for 1888 as more than \$27,000,000,000.

In its relation to this, the most powerful of all agencies within its borders for good or for ill, three possible courses are open to the State, each with its own peculiar advantages and disadvantages. In the first place there is the system of direct governmental control, of which Germany, Belgium, and Australia are good illustrations. 2. The system of indirect governmental control through a commission, as in France. 3. The system of non-interference. In other words, the same degree of "free competition" as exists in the case of corporations formed purely for production or trade.

The State, as an organic brotherhood, ought to adopt that one of these three courses which, under the given conditions, will most promote the good of all.

As the system for managing property of any kind that is adopted in one generation is not of necessity the best system for the next generation, so private management of the railroads may be the best for one decade and governmental control for another, and *vice versa*. It is an interesting historical fact, however we may try to explain it, that the management of railroads is going through the same evolution that the ordinary highways went through before them. A well known writer, speaking of the roads of the middle ages, says: "Such ways as there were formed part of the property through which they ran; and when the ownership passed into the hands of a feudal lord, he obtained property rights over the road. But as the central government grew in power in various states of Europe, from the sixteenth to the eighteenth century, it also laid claims to rights over the roads; first, in the form of a right to levy tolls; much later, in undertaking to build roads, and maintain them under its own control."

When the railroad was first introduced, nobody thought of it as anything more than an improved highway. It was supposed, of course, that all the carriages would be obliged to run in a certain groove, but any one was to be allowed to run his carriage over the road, provided only he paid the toll. This is well illustrated by the charter of the Ithaca & Owego Railroad Co. The twelfth section of that charter reads as follows: "All persons paying the toll aforesaid may, with suitable and proper carriages, use and travel upon the said railroad, subject to such rules and regulations as

the said corporators are authorized to make by the 9th section of this act."

The very first projectors of the railroad, foreseeing that it would almost entirely supplant the ordinary highway, strenuously insisted upon direct governmental control. Stephenson himself, before a committee of Parliament, strongly advised against leaving so important a matter to competition. For, said he, "where combination is possible, competition is excluded." It is certainly true that every country since his day, that has allowed its railroads to be built by private enterprise, has developed a large class of unscrupulous operators, who have rapidly achieved great fortunes by the manipulation of stocks on the exchange, and a large number of reckless officials have become suddenly rich by quite other means than the efficient administration of the properties committed to their charge.

It can hardly be doubted that the railroads have already advanced in every civilized country beyond the stage of a purely private corporation. The daily life of the people, their property, their business, their social pleasures, are too intimately connected with railroads to make it reasonable for the State to entrust their management exclusively to a few magnates who have no other interest in the people than that of dollars and cents. There is no reason to suppose that the States that have adopted governmental control desire to change their method, or that the people are not far better satisfied with such management than they have ever been with any other.

When Leon Say, as minister of France, discouraged in his budgets additional outlays for the acquisition by the State of the railroads, the Chamber by an over-

whelming majority defeated his proposals and reaffirmed the determination of France to gain possession of its railways even before, if possible, the expiration of the ninety years of the original concession.

In England in 1873 there was an entire reversal of the policy that had prevailed down to that period. The notion that railroads are private enterprises was completely abandoned. The political thinkers of the kingdom had learned by experience that there was at least one department of human activity where the doctrine of "free competition" would not apply. In 1873 a commission was appointed to see that the laws were properly obeyed by the railway companies, and that the interests of the public should not suffer. Notwithstanding the strenuous efforts of the railway corporations to prevent it, the commission was reconstituted in 1878 with enlarged powers and made a permanent tribunal.

"With the appointment of the commission of 1873," says Simon Sterne in his *History and Political Economy of Railroads*, a work I have made much use of in this chapter, "the English railway system entered upon a new phase. A proposition of the ownership by the State of the railways of England, which twenty years ago was looked up as chimerical, is now regarded as a very possible, and will very soon be regarded as a very probable contingency."

In the United States we have passed through the period of non-interference in the management of railroads, and have arrived at the stage of governmental supervision by commissions. In 1850 New York deliberately abandoned the plan of governmental supervision by its general railroad act of that year, which allowed any twenty-five persons, by the mere act of



filing articles of incorporation in the office of the Secretary of State, to become a railroad corporation, endowed with power to take property on appraisal and to run lines wherever they saw fit. Most of the commonwealths followed the example of New York. All parties seem to have honestly expected that monopolies would disappear, and that the principle of free competition would give them all of the advantages of governmental supervision and none of its ills. When in 1857 many of the railroads went into bankruptcy, committees of reorganization took them in charge. The result was that they came out of bankruptcy with a larger capitalization than they went in ; and in order to pay the interest on this watered stock in addition to their other expenses, the managers of the roads were obliged to bleed all non-competitive points ; for there alone did they possess monopoly power.

Then came the era of land grants and lavish appropriations. The United States government gave to a single corporation 47,000,000 acres of land as a subsidy, and "the State of New York paid to the various railroads within its borders about \$8,000,000, of which about \$5,000,000, granted to the Erie Railroad Company, was wholly lost, and granted about \$30,000,000 in municipal and county subscriptions." In spite of all this assistance, unprecedented in the history of any country, "before the end of 1874 108 railway companies were insolvent, and interest was unpaid on more than £100,000,000 (\$497,807,660) of mortgage bonds which they had issued."

But by the same system of reorganization as was adopted in 1857 the railroads again issued forth from their insolvency with more watered stock, and again began the process of oppressing local traffic.



This oppression was carried to such excess as to become unendurable.

In resistance to it many of the legislatures throughout the West passed what are known as "granger laws," by which commissioners were appointed to regulate railroad rates, to forbid preferences, and to have general oversight of railway affairs. This legislation was violently opposed by the railroad companies, but was completely vindicated by the United States Supreme Court. A similar commission, though with somewhat limited powers, was appointed in Massachusetts and, after a long struggle, in New York. Now most of the commonwealths have railroad commissioners with more or less extensive powers, and the central government through its interstate commerce commissioners has never in its history approached so near to absolute control over any corporation as it exercises to-day over our national highways.

The committee appointed by the New York Assembly in 1879 to investigate the railroad systems in that commonwealth give us in their report a most vivid, but yet truthful, picture of the fruits of the "non-interference" or "free competition" policy of railroad management, and what the policy would naturally lead to in any other part of the country under similar conditions. They found, for example, that the New York Central Railroad Co. watered its stock to the amount of almost \$9,000,000 before its consolidation with the Hudson River Railroad Co., and over \$44,000,000 after the consolidation, thus laying the foundation of the colossal wealth of the Vanderbilts; that the Erie Railway Co. watered its stock and bonds not less than \$70,000,000; that there was an entire abandonment on most of the roads of any fixed schedule of tariff rates

for local traffic, the New York Central, at the time of the investigation, having upwards of 6,000 different contracts for the carriage of local freights, granted at the caprice, or whim, or interest of the freight agent.

To any one at all familiar with the facts, it would seem to be beyond all reasonable dispute that the United States, in common with every other civilized land, should entirely abandon the policy of free competition in its treatment of railroads, and by a strict governmental supervision should at once institute the following reforms : 1. It should prevent the building of superfluous railroads. Most duplicate lines are of this sort. Few railroads in any part of the world have their carrying capacity taxed to the utmost. The construction of a parallel line where the existing line is entirely competent involves an unnecessary expenditure of capital, divides the traffic, and results in the long run in higher charges. For although a short war of rates may sometimes follow the establishment of such a line, the long-continued peace that its ultimate absorption brings about usually proves far more injurious to the public welfare than any supposed benefit that its existence at first seemed to promise. 2. It should prevent misrepresentation on the part of railroad corporations of their business and their profits. The administration of the roads should be in the full light of the public. The State should compel their managers to render at stated periods a full and accurate account of their operations, so that every citizen may know with authority their earnings and liabilities. If any deception is practised in the matter, the government should see that the parties responsible for it are severely punished. 3. The State should require that the stock of railroad corporations be fairly and hon-

estly capitalized, and that excessive profits be prevented by proper reduction in rates. It is the opinion of railroad experts that unlimited competition in railroad affairs and fictitious capitalization go hand in hand. So long as a rival enterprise may at any time come in, and compel railroad companies to divide the field they have developed, regardless of the fact as to whether they have received any fair compensation for their investment, they will continue to resort to the scheme of a semi-fraudulent capitalization to obtain an immediate return for their labor and money. The only way to have a capitalization that closely corresponds to the actual cost of construction and equipment is to abandon *in toto* the position taken by Sidney Dillon, when president of the Union Pacific, that "a citizen, simply as a citizen, commits an impertinence when he questions the right of a corporation to capitalize its properties at any sum whatever," and maintain just the opposite ground.

Careful students tell us that the present railroad system of the United States could easily be replaced for at least \$1,000,000,000 less than its present valuation. Lack of proper governmental supervision is chiefly the reason why the people are made to pay every year for transportation millions of dollars more than it actually costs, or than a just recompense for the money invested actually requires. 4. The State should also prevent railroad companies from fixing their rates on the maxim of charging "all that the traffic will bear." This maxim makes the railroad company a silent partner in every business along the line. Without any investment of capital, it can determine the success or the failure of every industry within its sphere of influence.

A railroad should not be allowed to have one set of rates for one person and another set for another. Nor should a railroad be allowed to make sudden and arbitrary changes in its rates. The sudden lessening of the tariff rates may be as injurious to commercial interests as the sudden raising. Every man doing business with the road should know from the published schedule just what to expect, and the government should guarantee him fair treatment. "Of all the evils incident to American railway administration," says a high authority, "that of personal favoritism has been the most shameless and the most mischievous."

5. The State should compel the boards of railroad directors to adopt the principle of minority representation. Minority representation would go far towards repressing secrecy of management, which gives directors almost unlimited opportunity to exploit the stock of their roads as they see fit, unknown to the general public. Much of the stock of our American railways is held abroad, and is not transferred on the books to the actual owners. Who the fictitious holders are, as a rule, is known only to the directors. By secretly selling out their real holdings at a high price, and obtaining the power to represent these fictitious holdings, they may capture the road from the real owners, and use it as they will. The State is the only power that can remedy this evil. By compelling the adoption of the minority system of representation, the whole constituent body would be represented in the board of direction. The opportunity for fictitious owners to wreck the road would be reduced to the minimum.

6. The State should compel railroads to have a higher regard for the sacredness of human life. The total number killed and injured on the railroads of the

United States, according to the census of 1880, was 8215. The fourth annual report of the Interstate Commerce Commission makes the number for the year ending June 30, 1889, 35,354.

"These figures," the commissioners go on to say, "show that one death occurs for every 357 employes and one injury for every 35 employes. Or, if a similar statement be made for trainmen . . . one death occurs for every 117 employes and one injury for every twelve men employed." The statistics for the last three years are even more appalling. Wellington did not lose so many at the battle of Waterloo, nor Meade at Gettysburg. The killed and wounded on both sides at the battle of Sedan scarcely equal the number of men annually killed or maimed in this country under our present system of railroad management. It is allowed by all that uniform automatic couplers and automatic brakes would reduce this destruction of life and limb at least a third. Every railroad should be compelled to adopt them within a certain reasonable period, regardless of the question as to whether it will reduce for a time their annual dividends. The sacrifice of life is three times as great, proportionally, in America as in England and four or five times as great as in France. Neither speed nor comfort can atone for this reckless destruction of human life. Our lawmakers should fully investigate the causes that lead to so many disasters. Most of them can and ought to be prevented.

Our national government, while justly content for the present to manage its railroads through the system of commissions, in common with the other civilized nations of the earth should be looking forward to the time when it can safely adopt entire governmental control.

The amount of money the railroads gather from the people of the United States every year for transportation is several times that of the entire revenue of our national government. Yet every dollar of it is in the hands of directors who have scarcely any accountability to the public, or even to their own shareholders. The political influence that is wielded by railroad managers is almost beyond computation. Whenever they wish to exercise it their power in electing governors, forming legislatures, and appointing committees is wellnigh irresistible.

In any collision between the railroads and the government the pecuniary interests of the people are decidedly with the railroads, for the bonds of the railroads many times exceed in value the bonds of the government. It seems perfectly clear, therefore, that a resort to the ballot under existing conditions is no remedy for this evil. Our political machinery falls far short of being equal to the emergencies of the present. Men of far higher ability and character must be entrusted with the affairs of State before it will be wise to increase very much the sphere of government.

But civil-service reform is only one of the crying needs of our time. The people must be aroused to see the fact that all natural monopolies ought not to be conducted as private enterprises, but as public trusts, and that of all natural monopolies those that have to do with transportation are the greatest. The system of State and Interstate Commissions will do much to enlighten the people as to the nature and difficulties of the railway problem, and thus prepare them to act in reference to it with a wise discretion. But we should look upon commissions as a means to an end, not as an end in itself. Whenever the moral administration of

our government will bear the strain put upon it by such an act, it is beyond reasonable doubt that the true interests of the people require that in this country as in all others the means of transportation should be directly under the control of the agents of the people in their organic capacity as a State.



## CHAPTER VII.

### THE STATE AND TAXATION.

THE saying is attributed to Colbert, the celebrated finance minister of Louis XIV., that "the act of taxation consists in so plucking the goose as to procure the largest quantity of feathers with the least possible amount of hissing." The history of taxation abundantly testifies that all governments, whatever their form or character, have ever made temporary circumstances and a desire to retain power the ruling motive for determining who shall pay the taxes and how they shall be levied.

David A. Wells, after speaking of the different expedients governments have devised for raising taxes, says: "It is nevertheless probably true that there is not, at the present, a single existing tax decreed by despotism, or authorized by the representatives of the taxpayers, which has been primarily adopted or enacted with reference to any involved economic principles, or which has primarily sought to establish the largest practical conformity, under the existing circumstances, to what are acknowledged to be the fundamental principles of equity, justice, and rational liberty."

It is chiefly because of these facts that the payment of taxes is so frequently regarded as an unmitigated

evil—something concerning which almost any means are legitimate that will help one to a way of escape. But yet nothing is clearer than that taxation equitably administered is a great blessing ; that it does more than almost any other act to further human prosperity and happiness. No organized government could exist without taxation. There would be no one to formulate the law and no one to execute it, and thus no security to life or property. Nothing could be done to promote the intelligence of the people or punish crime. The streets could not be cleaned, paved, or lighted. Parks and bridges could not be built or anything be done to protect the people from disease and pestilence. Indeed, it may truthfully be said that civilization and taxation go hand in hand, that a high degree of civilization cannot exist without high taxes, and that the higher the civilization, other things being equal, the higher the taxation.

It is of great importance for us to keep in mind, however, that all legitimate taxation is limited to the needs of the public, and that no tax can rightly be levied for any other purpose. "To lay with one hand the power of the government upon the property of the citizen," said Justice Miller, in giving the opinion of the United States Supreme Court in the famous Topeka bond case, "and with the other bestow it upon favored individuals, to aid private enterprises and build up private fortunes, is none the less robbery because it is done under the forms of the law and is called taxation." Judge Cooley, in his *Principles of Constitutional Law*, admirably expresses the same truth when he says : "Constitutionally a tax can have no other basis than the raising of revenue for public purposes, and whatever governmental exaction has not this basis, is tyrannical and unlawful."

While all just taxation is limited thus to the needs of the public, the right to tax has no other limits, and involves also the right to destroy. All the property of its subjects can be taken by the government if the peril of the State is so great as to require it. "If the right to impose a tax exists," says Chief-Justice Marshall, "it is a right which in its nature acknowledges no limits."

Taxation is always an act of sovereignty, and belongs only to the State as a whole and not to any individual portion. This is involved in the very idea of the State. As a distinct and independent organism it could not keep itself in existence without the power to obtain food and air. Every true State is a more or less developed brotherhood. The brotherhood as a whole has absolute sovereignty over the individual members, and has not only the right, but the duty to see that each member does as much as in him is for the good of the brotherhood. To tax is the first and chief way of exercising this right and discharging this duty.

On the other hand, no State has a right to levy taxes on any person or object outside of its own territorial limits. As a recent decision of the United States Supreme Court expresses it: "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. Property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised. Indeed, it would seem that no adjudication should be necessary to establish so obvious a proposition."

It is a great error to hold, as do some economists even in our day, that "taxes are the compensation which property pays the State for protection." The truth is that every person ought to support the State

not because it protects him, but because he is born a member of the State and cannot live apart from the State. The more civilized he becomes the more dependent he is upon the government. The attempt to separate a man from the State and to treat him as now within the State and now without the State, is an absurdity. The minimum of every civilized man's existence includes the blessings of the State.

Even more fallacious was the doctrine of the American revolutionists of "No taxation without representation." It is enough to say of the doctrine that the revolutionists themselves abandoned it the moment they obtained control of the taxing power.

Just here we may be greatly helped in our discussion of this subject by observing that the thing that makes property of any kind valuable is the existence of other men. Wealth is power in exchange, and, of course, no exchange can take place unless two or more persons exist to make it. As the people increase in numbers and civilization, other things being equal, the more valuable becomes property. Gold and silver dollars might be as plenty as leaves on the trees in mid-summer, and yet they would be of little or no value if they could not be exchanged for human service. Let a man try to live by himself alone, and all opportunity to acquire wealth as well as opportunity to enjoy his wealth is gone, and his wealth is gone also. Wealth, therefore, is a creation of society. And what the people make valuable they have a right in their organic capacity as a State to take for their own use as the public good requires.

But we should greatly err if we supposed that taxation consists in assessing and collecting from the people for the support of the government merely or chiefly a

portion of their property. For the true position is that taxation is primarily upon persons and not upon property. A person who has no property should not for that reason be exempt from taxation, nor should the person who has the most property of necessity pay the most tax. Property, as such, does not owe any duty to pay taxes. The State has to do directly with persons only, not with property. Every person is under obligations to support the State because of his very existence in the State. He is born a member of the brotherhood and is bound to do all that in him is to support the brotherhood. The State can do without him, but he cannot do without the State. There might come a time in the history of any State when property would be of little or no value to the government, when men and not money would be the State's only need. Suppose the property in New York City to remain as great as it is at the present and a pestilence to leave only a half dozen people on the island to enjoy it. This little band of survivors would still constitute a State and have a government and pay taxes, but it would not be a property tax. The only service they could render the government that would be of any value would be a personal service.

In all primitive States contributions for the support of the government are wholly personal. For there is little or no property in such a State to be taxed. The largest tax of modern times is a tax on persons. In the most highly developed nations of the world the duty of rendering military service, and for an equal period, is exacted of high and low, rich and poor alike. No one is exempted except on the theory that he will more efficiently serve the State by remaining at his ordinary tasks.

Granting then that all taxation is primarily on persons, we can readily assent to the maxim laid down by Adam Smith in his *Wealth of Nations* that "The subjects of every State ought to contribute to the support of the government as nearly as possible in proportion to their respective abilities." The main question, therefore, before us is how shall we estimate this ability? What system of taxation ought the State to adopt in order to bring it about that each person shall contribute as in him is to the support of the government? It is clear, it seems to me, that this ability is not justly estimated in our day by the amount of property. I say in our day. For there undoubtedly is a period in the development of States when a general property tax is a just tax. In the agricultural stage of development when the means of gaining a livelihood are confined to the soil, and all property practically consists of land, and the implements and beasts of burden for cultivating it, a property tax is well suited to the times.

But when the commercial stage of development is reached the economic conditions are almost wholly different. Trade is no longer limited to the superfluities of adjoining households. Wealth ceases to be wholly quantitative and becomes largely qualitative. The capitalist now controls the wealth of the country, not the land-owner. Personal property so rapidly increases that it soon overshadows real property both in amount and influence. All economists agree that in our modern industrial States the value of personal property far exceeds that of real estate. This is true even of the agricultural districts of the far West. What, then, must be true of a country so largely commercial as the commonwealth of New York? Yet personality in New York pays less than one tenth of the public



charge, while realty pays more than nine tenths. Those who possess stocks, bonds, mortgages, and the like, practically escape taxation, especially if they be large holders, and the small owners of real estate who have the hardest fight for subsistence bear nearly the whole burden.

The present distress of the farming portions of the community is largely due to onerous and unjust taxation. But they will never be relieved of this iniquity till the State abandons the mediæval system of a general property tax. It has been abandoned by all the great States of modern times except America, and it will be abandoned here also as soon as the people once get acquainted with its gross iniquities.

Francis A. Walker, in a recent paper on "The Bases of Taxation," gives a typical illustration of the practical workings of what he calls the "flagrantly iniquitous" method of laying the entire burdens of government upon property, by citing the case of a farmer near a certain New England village. His little farm with its buildings and stock was assessed at \$2280, and taxed, including his poll tax, \$25.94, the total proceeds of his land, labor, and capital for the year being a little short of \$800. Many of the mechanics in the village earned more than that amount annually, but because they did not choose to save anything paid no tax at all. The farmer is obliged to keep on contributing to the support of the government essentially the same amount from year to year, though his crops may often be an utter failure, and the mechanic who receives the chief benefit of the government continues to contribute nothing.

While all economists allow that the general property tax in the United States is a "dismal failure," and heartily agree with the uniform testimony of the offi-



cials charged with the duty of assessing and collecting the tax, that in its practical application "a more unequal, unjust, and partial system for taxation could not well be devised," some contend that the trouble is not with the system itself but with the mode of its execution; that, if it were properly administered, it would conform to the ethical requirements of the case and be a just and equitable method of raising the public revenues. But this position is clearly seen to be erroneous when we consider the true nature of property and recur to the fundamental maxim of all righteous taxation—that it be proportional to one's ability to pay.

The richest man is not necessarily the one who has the most property. A man may be rich and able to contribute largely to the support of the government who has little or no property. It has already been shown that all wealth is a creation of society. We have now to observe that every opportunity to make money by serving the people in any capacity is also a creation of society; and just as the people have a right to take a portion of the property they make valuable for the support of the State, so they have an equal right to take a portion of the revenues derived from any occupation which they give the opportunity to pursue. To gather taxes from the one source and not from the other is a gross injustice. Who is there so blind to present conditions as to seriously defend, at least on any moral grounds, a system that compels the owner of \$10,000 worth of property, whatever its annual product, to pay an annual tax of \$100, and never asks the bank president, the doctor, the lawyer, or the minister who receives a regular yearly income of \$10,000 for a single penny? The doctrine of "the equal taxation of all property; the non-taxation of labor," is an an-

tiquated doctrine. It has been abandoned in almost every civilized land. It can not be justified by any ethical principle and is out of harmony with all existing economic facts.

Rejecting then the property system of taxation as the true basis of taxation, we come next to inquire, Does expenditure furnish us such a basis? Ought what a person consumes to determine the portion that he should contribute to the support of the government? This theory, which is one of the oldest in economic history, an able writer states as follows: "Every man ought to be taxed on all that property which he consumes or appropriates to his exclusive use." In opposition to this view it may be said, in the first place, that it is economically impossible for the government to take anything for its support from a man who does not earn the bare necessities of life. To attempt to do so would issue only in failure. For what the State took away from such a man with one hand as a tax-payer it must return to him with the other as a pauper.

In the second place, on what ethical ground should we exempt men from paying a tax on that portion of their wealth that they do not consume? It is from what they have left after supplying the necessities of life that they are most able to contribute to the expenses of the government. The first maxim of a just system of taxation, that a person should contribute to the public revenue according to his ability, is plainly violated by such an exemption. The man with millions and few personal expenses might often by this arrangement contribute less to the support of the government than the day laborer with a large family who possessed almost nothing.

It can hardly be doubted that our national taxes

upon salt, coal, clothing, and the materials used in the construction of dwellings, violate the very first principles of justice and economics. They enhance the cost of mere subsistence, and any act of the government that does that is oppressive and unjust. They are as another expresses it, "a veiled or disguised tax on the wages of labor," and pre-eminently injurious to the welfare of the very classes they profess to benefit. Just as the property system of taxation oppresses the farmer and compels him to contribute far more than his due share to the public revenues, so the expenditure system, or a tax on consumption, oppresses the working classes, obliging them to pay not only their own taxes but a large proportion of the taxes of others.

It may almost be called an axiom that the revenues of the State should be derived from the revenues of its members. In the modern State the revenues of the people come to a great extent from the stocks and bonds of corporations. Hence one of the chief contributions to the support of the government should come from that source. Corporations are the creations of the State. They are allowed by the State to direct and control the industry of the country. The wealth of the nation is very largely in their hands. By putting a tax on their annual earnings the State properly recognizes the great change that has taken place in economic conditions. It adapts itself to present economic facts.

In estimating the tax that corporations should be required to pay the government, the basis ought not to be general property. For property no more furnishes a just measure of ability to pay taxes in the case of corporations than in the case of individuals, and we have already seen how iniquitous such a system is

both in theory and practice. To make the cost of the property the basis would be even more unjust. No one would maintain that the original cost bore any necessary connection with present value, or power to pay tribute to the government. Vital objections from ethical grounds may also be made against assessing the tax upon the capital stock. If it is assessed upon the par value of the stock, the tax can easily be avoided by issuing a nominally small capital stock, while the market value of the stock remains several times its face value. If it is assessed upon the market value, heavily bonded corporations would escape taxation altogether, for the capital stock alone would represent only a fraction of the real value of the property. And if no dividends are paid on the stock, its market value, being almost wholly dependent on the manipulations of a stock exchange, would be no measure of its real value, or the productiveness of the invested capital.

The only ethical basis of a corporation tax is earnings. By this we do not mean gross earnings, for they may often be quite out of proportion to the actual earnings. Two companies may have equally large gross receipts while the necessary cost of operation or management in the one case is far greater than in the other. Their ability to pay taxes would therefore greatly differ. Nor do we mean by earnings dividends. If the tax was confined to dividends, not only would the profits that were put into the reserve fund escape taxation and the earnings that were devoted to new constructions or to new equipment, but two corporations with the same earnings, the one having capital stock only, the other a bonded indebtedness on which it paid out half of its profits, while paying a nominally equal

tax, would actually be paying a grossly unequal one.

We mean by earnings net earnings, net receipts,—what is left of the gross receipts after deducting actual current expenses. Every corporation should be made to contribute to the support of the government, according to its actual net profits. Of course these earnings can be diminished by paying unduly large salaries to the officials, but this can happen only in those corporations, now comparatively few, in which all the stock is owned by its managers. The actual cases of such evasion are so insignificant that the American commonwealths that have adopted this tax *e. g.*, Pennsylvania, do not complain of it, nor do any of the States of Europe where this method of taxation is almost universal.

The true position with regard to this mode of taxation cannot be more clearly or forcibly expressed than in the words of Professor Seligman, to whom I am indebted for many of the views expressed above: "Net receipts form the most logical basis for corporate taxation. The tax is not unequal in its operation, like the gross-earnings tax. It holds out no inducement to check improvements like a general property tax. It is just, it is simple, it is perfectly proportional to productive capacity. In short it satisfies all the requirements of a scientific system."

Along with this tax on corporations should go a tax on mortgages and all other similar securities that are not corporate. It would manifestly be the height of injustice to tax the stock of corporations and not to do the same with other competing forms of wealth. The State, therefore, if it wishes to levy its taxes according to any moral principle, will not stop with a tax on the

earnings of corporations. It will have all other similar securities contribute their share to the support of the government. The people determine the value of a mortgage and the revenue to be derived from it just as truly as they do the value of a railroad or horse-car. And just as they have a right to take, in their corporate capacity as a State, a portion of the net receipts of the one for the public revenue, so they have a right to take for the same purpose a portion of the profits of the other.

While the chief source of revenue for the modern State should be the stock of corporations, mortgages, and similar securities, they cannot justly be the only source. For individuals and firms owe their opportunity to profit by their vocation to society and are therefore justly called upon to contribute their share to the needs of the public. No man can successfully pursue any trade or profession unless the people create a demand for his services, and the greater the demand, other things remaining the same, the larger will be the revenue received for those services. Whatever one obtains in this way over and above that which is necessary to maintain himself and his in a healthy condition for labor is properly subjected to taxation by the State.

It is not our purpose to discuss the details of taxation, but simply to point out some of the ethical principles to be followed. But what can be more in accord with justice in the taxation of incomes than that the larger income, other conditions remaining the same, should contribute a relatively larger portion to the needs of the government? While recognizing fully the principles of progression in the taxation of incomes, and approving, in the main, the well-known saying of the great French economist, J. B. Say, that "taxation



cannot be equitable unless its ratio is progressive," we must also maintain that the revenue from property should be taxed at a higher rate than the revenue from personal effort. For funded income is far more certain than personal income, and not so easily swept away by some slight mishap.

Another legitimate source of revenue for the State is a tax on gifts and inheritances. Such a tax is in no sense a confiscation. For the receiver's ability to pay taxes is suddenly and through no effort of his own greatly increased, and the State, allowing and defending the transfer, has a right to a share of the benefit. Nearly every civilized country in the world now has an inheritance tax as a part of its fiscal system. In France or Italy the tax on Jay Gould's estate would have amounted to about a million dollars; in England to nearly three millions; and in Canada or Australia to over three and a half millions. "Of all forms of taxation," writes Mr. Carnegie, "this seems the wisest. Men who continue hoarding great sums all their lives, the proper use of which for public ends would work good to the community, should be made to feel that the community, in the form of the State, cannot be deprived of its just share. By taxing estates heavily at death the State marks its condemnation of the selfish millionaire's unworthy life." The application of a progressive system of taxation to inheritances is most reasonable and just. The proposal to put a two per cent. tax on estates above \$100,000, three per cent. on estates above \$500,000, five per cent. on estates above \$1,000,000, and a much higher tax on larger estates, should speedily be enacted into a law. It would in no wise discourage industry and enterprise, is easily collected and paid, and would provide with the least friction a very large



part of the revenues of the State. It is by no means an accident that this tax finds its highest development in such countries as England, Switzerland, and Australia, the most democratic of the world.

With the view of taxation already taken distinctly before us, we are prepared properly to consider some of the important phases of our subject that hitherto we have failed to notice. And first the doctrine of the "diffusion of taxes." "A tax," says Thiers, "which at first sight appears to be paid directly, in reality is only advanced by the individual who is first called upon to pay it." Lord Mansfield advocated the same doctrine in his speech on taxing the colonies: "I hold it to be true," he says, "that a tax laid in any place is like a pebble falling into and making a circle in a lake, till one circle produces and gives motion to another, and the whole circumference is agitated from the centre."

If this were a true doctrine it would matter but little from what source the State derived its revenue. Any article of consumption might be selected to pay the tax, and still each person in the State would contribute according to his ability to the support of the government. But as a matter of fact, the condition of an absolute and unlimited competition that it presupposes does not exist and can not exist, at least so long as men remain finite. So far as there is the slightest ignorance of the best market, or inability to reach it, or fear, or superstition, or unwillingness to put forth the effort to shift the burden on to the shoulders of those who ought to bear it; and also so far as there exists the slightest inclination in any portion of the community to resist this diffusion, the tax will tend to stay where it is first levied. These obstacles to diffu-

sion should not be underestimated. Any legislator who thinks it is a matter of indifference where and when and how taxes are imposed, could hardly be in greater error. He is as truly bound to consider the ultimate effects of a projected tax as the immediate effects. To ignore these effects is not only to disregard the equities of contribution, but to leave out of consideration the general interests of trade and production.

Any single-tax theory, whatever the object taxed, has over against it all the objections to this doctrine of the diffusion of taxes. It is untrue to human nature. It assumes a condition of things that never has been and never can be a reality. Free competition anywhere in human affairs is a product of the fancy, not a fact, and never can be. For a government to base its requirements on absolute competition is to treat man as so many cubic feet of matter, or to assume that he possesses divine powers. In either case the question of taxation would, of course, be shut out altogether.

A single tax on land is open to all the objections arising from the application of this diffusion theory of taxation, and, in addition, to all the objections presented above to making property the basis for determining the portion each person should contribute to the needs of the government.

Another question much discussed by economists is whether taxation should be direct or indirect. The ultimate ethical principle that each person should support the government according to his revenue, plainly teaches us that all taxation should ultimately be direct, and every State should be looking forward to the time when it shall be obliged to levy no other. Ferdinand Lassalle, in his *Indirect Taxation, and the Condition of the Working Classes*, undoubtedly exaggerates to

some extent the burdens that indirect taxation has rolled upon the shoulders of the working classes, but in a large degree the impeachment of the system is justified by history. For centuries extravagant monarchs have resorted again and again to some tax upon the necessities of life to replete their exhausted treasuries. If the system of taxation outlined above for the modern State be correct, the only way to bring it about that all classes shall bear their share of public burdens is by a direct tax on revenues. The time may be far distant when the system will reach its true fruition. Still all should be done that can be done under given conditions and limitations for the attainment of that end. "For one, I do not deem it unreasonable," says President Walker, in speaking of the evils of the present method in its effects upon the working classes, "to look forward to the time when through the instruction of our children in civics, ethics, and economics, and through the long-continued enjoyment of political franchises, government shall be found, immediately subject to popular control, which shall yet be able to collect by direct assessment and exaction that tenth or that fifth part of the laborer's wages which is now conveyed away from him by disguised imposts upon the decencies, comforts, and luxuries of life."

It must be allowed, however, that under present conditions the people desire to pay their taxes in what Gustav Cohn calls "a state of unconsciousness." So long as they regard the paying of taxes as a burden gladly avoided and not as a duty joyfully performed, it will be politically wise to let them mitigate the pangs of the operation with the "drowsy vapor" of highly taxed tobacco and the "exhilarating stimulus" of highly taxed wine, just as they assuage the ex-

cruciating pains of the surgeon's knife with a liberal draft of laughing-gas or some other powerful anæsthetic.

In our country much of the injustice regarding taxation arises from the fact that the national government has its own system of levying taxes, the separate commonwealths have theirs, and the localities theirs. Nothing but confusion and chaos can result from such a method, and the only way to proceed rationally in the matter is to have the central government make one and the same system obligatory upon all, leaving the execution of the system for national purposes to the nation, for commonwealth purposes to the commonwealth, and for local purposes to the locality. It is hard to see how any just and equitable results can be attained in any other manner.

This position, however, does not necessitate that the system for local taxation should be identical with that for the State. On the contrary there is good reason for holding that they should greatly differ. For the maxim of the old economists, that "taxes are a compensation for protection," while not true at all of the State, is true, to a large extent at least, of the locality. All tangible property of every kind is benefited in a peculiar sense by the action of the local authorities. If the streets are well lighted, the police efficient, the schools of a high grade of excellence, the sewerage and the roads are kept in a good condition, all the visible property of the neighborhood is made more valuable thereby. It is eminently proper, therefore, that the property of the locality should pay the local tax irrespective of annual product. For the test is not the ability of the owner to pay, but the expense the protection of his property occasions the locality and the benefit his property receives from such expenditure.

From the view of the State advanced in these pages, it is easy to see how unnecessary and useless—not to say unjust—it would be to levy taxes on all corporations within the State, irrespective of their end or purpose. Charitable, educational, and religious corporations are doing directly the work of the State. They are acting for the State, doing what the government would otherwise be obliged to do by its own direct effort. The State allows them to exist for that reason. If they fail to do this work better than it could be done by the government, or at least as well, they should at once be suppressed and the funds they have been allowed to accumulate devoted by the State to some other purpose. For the government, after it has once given them its sanction, to impose upon them a tax, or in any way fail to foster and encourage their undertakings, is to belie its own action and justly bring upon itself the reproach and contempt of all its subjects.

Of course we do not advocate any sudden revolution in the present methods of taxation. We have endeavored in this chapter on the relation of the State to taxation simply to present a general plan of taxation that we think will bring the ethical demands of the case into harmony with modern economic facts. The details of application we intentionally leave in the hands of experts who make such matters a special study. We have referred to existing systems only by way of illustration, or contrast, our object being rather to present an ideal to be realized by every State as rapidly as its own conditions and limitations warrant. We do not advocate or desire a sudden and radical upheaval of present methods. Our central government may wisely, for the present, continue to obtain its revenue largely from customs and duties. But the commonwealths can

speedily abolish their tax on real estate and meet their expenditures by a tax on corporations and inheritances, and the localities can be left to look to real estate alone to meet the demands upon their treasuries. The other requirements of an equal and just system of taxation we should strive to attain later. Undoubtedly there exists in our country at present a strong prejudice against an income tax of any sort and a decided unwillingness to give it a fair trial. It is evidently unwise to urge its immediate adoption. It will come, however, in time, as it has already done in all other civilized lands. For, rightly administered, it is the most equitable of all modes of taxation, as well as the easiest to understand and the simplest to put into execution.

While we strenuously insist that all taxation is upon persons and that ability to pay should always be the basis upon which they should be required to support the government, we would not lose sight of the fact that the person taxed is as truly an end of taxation as a means. No taxation can be a just taxation that is not determined by what is due to the tax-payer as well as by what he owes to the body-politic. Every effort should be made by the government to have its taxes so appointed that each and every member of the State shall be duly benefited thereby. No tax, therefore, should be levied except under due process of law. The entire procedure of assessing and collecting any tax should always be open to the inspection of the public. The government should always make its law clear and definite and help the tax-payer in every way it can to meet its demands in the easiest possible manner. To this end "he should not be liable to any sudden surprises; he should not be singled out with any disproportionate requirement; he should know just what is



expected from him, and when and why. And all this requires that the whole method of taxation shall not only be carefully considered by the government, but should proceed upon definitely stated laws. A person's ability to pay taxes is in part proportioned to the clearness and precision with which the laws respecting taxation are stated and followed."

## CHAPTER VIII.

### THE STATE IN ITS RELATION TO MONEY.

THOROLD ROGERS has well said that "just as the development of language is essential to the intellectual growth of a people, so is a medium of exchange to civilization." Without going so far as to say with Aristotle that money "exists not by nature but by law," we may safely affirm that it is wellnigh impossible to overestimate the influence that every civilized government has in imparting acceptability to money, and in making it effective for the payment of debts and the purchase of commodities.

Thomas Baring is responsible for the assertion that it was impossible to raise any money whatever on a sum of £60,000 of silver during the crisis in London in 1847. The same difficulty was experienced in Calcutta in 1864 with £20,000 of gold. The reason in the former case was that silver was not a legal tender in London for any sum above forty shillings, and in the latter case gold was not a legal tender in Calcutta for any sum whatever.

No people have yet been found so low as not to have some kind of money, and almost every known substance has been used for that purpose. In 1851 more than 1000 tons of cowry shells were brought from India to Liverpool to be exported to Africa in

exchange for palm oil. In parts of China pieces of silk pass for money. In Abyssinia rock salt is used for money, and in Iceland dried codfish serves the same purpose. When Europeans first came to America cocoa-nuts were used for money in many parts of the country, and the skins of wild animals in others. About 1635 wampum was a legal tender among the colonists of Massachusetts and counterfeiters gave them much trouble. Musket balls were also a legal tender among them for sums under one shilling. For many years the early settlers of Maryland and Virginia used tobacco as money, and later it was made legal money. The fees and salaries of government officers were paid in it, and the public taxes were collected in the same article. Certain fees of court officers in the District of Columbia are computed in tobacco money to this day. Chavelier tells us that hand-made nails were used for money as late as 1866 in some of the more secluded villages of France. "In the British West India Islands," writes Mr. Madden, "pins, a slice of bread, a pinch of snuff, a dram of whiskey, and in the central part of South America soap, chocolate, cocoa-nuts, eggs," etc., are used as a medium of exchange. Among the ancient Greeks and Romans cattle were used for money. We get our word pecuniary from that fact. Tin was coined by Dionysius I., tyrant of Syracuse, and Roman and British tin coins are known to exist. Lead was early used for money, and is now so used in the Burman empire. The Carthaginians had a kind of leather money. The Emperor Frederick Barbarossa also used leather, and so did the French king, John the Good, in 1360. When Nicolo and Matteo Polo visited China in the thirteenth century they found money in use there made of the

middle bark of the mulberry tree, cut into round pieces and stamped with the mark of the sovereign. It was death to counterfeit or refuse to take this money in any part of the empire. At the time of the Norman conquest the English were using two kinds of money, known as "dead money" and "living money." The one consisted of slaves and cattle; the other of metal. When Europeans first began to trade with the South Sea Islanders they would accept beads or anything else of a gaudy character for their products, but as soon as they learned the use of axes, axes became the standard of payment and the basis of accounts. Although nearly all the civilized nations of to-day limit their supply of money to gold and silver, Russia in 1828 coined platinum into money. But the great difficulty of rendering the metal from ingots into coin and from coin into ingots caused it to be abandoned in 1845.

From this brief survey of the historical forms of money it is evident that almost anything can be used for money. But it is also clear that some substances are immensely superior to others for that purpose. As nations have advanced in civilization they have diminished the number of objects they use for money and increased the quality. No function of the government can be more important to the welfare of a people than that of determining what shall be the recognized medium of exchange. It is one of the first steps out of savagery into civilization. Trade could hardly go beyond the limits of personal barter without such a medium, and there could be little or no commerce between States.

It is plainly the duty of the civilized nations of the earth to select as the basis of exchange and standard of value for our day the precious metals, for they possess

above all other known objects the requisite qualities for such a purpose. 1. They concentrate much value in little weight. This makes them easily portable, in marked contrast with bars of iron, skins of wild beasts, and sheep or cattle. 2. They may be divided up to any extent desired without loss or damage. Skins, precious stones, and many other articles would be almost ruined by such division. 3. They are among the most durable of substances. Iron rusts, cattle die, but these metals are unaffected by the changes of the atmosphere or the lapse of time. 4. They are easily fusible and when coined they are always of the same quality. There can be good tobacco and poor tobacco, good sheep and poor sheep, but no such thing as good and bad gold or silver. When cows were accepted for taxes in Massachusetts the treasury very quickly became possessed of all the scrawny cattle in the colony. The tax-gatherers received no others. 5. They vary little in value from generation to generation. This is not so with corn or cattle. This requisite is of great importance in a state of society where deferred payments have become a prominent feature of industrial life.

In view of these advantages every civilized nation in our day ought to select the precious metals as its basis for money. Yet it is not necessary or desirable for a people to coin all the gold and silver that it uses for money. As a matter of fact, as the world advances in civilization the actual handling of the precious metals tends to diminish rather than increase. It would immensely impede the transaction of business if the people were always obliged to take the actual coin. When our national government coins gold and silver dollars the principal part of the product is stacked up

in the Treasury and certificates are issued for them which soon pass into the hands of the people. Only about one eighth of the coined silver dollars are bodily in circulation. As the expense of coining each one hundred million of silver dollars is at least two millions, and as the silver bullion itself is a better security than the silver coin, there is every reason for approving the position taken by Secretary Foster that we should issue certificates for the bullion and save the trouble and expense of coinage. "Of course I mean," he says, "that we shall coin all the gold and silver that our people may desire to use, but beyond that, for my own part, I do not see any necessity for coinage."

This policy is now actually pursued by our government. President Harrison, in his message to the Fifty-second Congress, in speaking of the results of the legislation on silver, says: "Nor should it be forgotten that for every dollar of these notes issued a full dollar's worth of silver bullion is at the same time deposited in the Treasury as a security for its redemption."

It by no means follows from the view taken above concerning the precious metals that they alone constitute wealth. A nation might possess a great abundance of these metals and still not be rich. It might have its coffers full of specie and be in great need of the necessities of life. Wealth consists not in money alone, but in an abundances of commodities, and no amount of money would be of much value unless it could be freely exchanged for commodities. The nation, therefore, that prohibits the exportation of money works its own ruin. One of the chief causes of the overthrow of Spain as a great political power was the adoption of this error. As the first receiver of the American production of these metals she tried by heavy duties and



prohibitions to keep them to herself. No trade was allowed with outside nations unless it resulted in the importation of money. The other European powers, following her example, acted on the same theory, and all the evils of the well-known Mercantile System were experienced for a century. No one was allowed to import goods in ships not belonging to the importing country, for otherwise money would have to be paid to foreigners for this service. Colonies were excluded from all trade except with the mother country for the same reason. It was not until this mercantile theory had been exploded by hard experience that the way was opened for the wonderful progress that has characterized modern industrial life.

But granting that a nation has made the precious metals, or one of them, its medium of exchange, it need not on that account alone limit its money circulation to the amount of specie it possesses or to certificates representing that specie. If it abounds in other commodities, its own credit may be made the basis of a further issue of certificates and the sum-total of its money be greatly increased thereby. Perhaps the best illustration of this statement is the Bank of England. It is allowed by the government to issue notes not only on its specie reserve, but also in the constant sum of £15,000,000 without any specie whatever, and no one hesitates to accept these notes for their face value in any part of the civilized world. The credit of a rich and trustworthy nation is at their back. They therefore circulate, although made of paper, on an equality with the actual coin.

Mere fiat money could not bring about such a state of affairs. Between the years 1744 and 1759 the paper currency of Rhode Island depreciated to such an extent

that in the latter year £100 sterling cost £2300, and in January, 1781, one dollar of the paper currency that had been issued by our Continental Congress was worth only a cent in coin, and by May of the same year less than three mills. Hence the by-word of our day : "Not worth a continental."

The two kinds of paper money that can be issued by a government are convertible and inconvertible ; or, as they are sometimes called redeemable and irredeemable. Paper money is convertible if its full immediate and unconditional redemption in coin is at all times within the choice of the holder ; all other paper money is inconvertible. The present paper money of most of the northern nations of Europe and the Treasury notes of the United States are good examples of the former ; and the present paper money of the southern nations of Europe except France, the mandates of the French Revolution, our Continental currency already referred to, the Confederate notes, and the notes of the Bank of France during the Franco-Prussian war are good examples of the latter.

As to the character of convertible paper money there can be no question. Being immediately redeemable in coin, it can serve all the purposes of money as well as coin and in many respects much better. But what of inconvertible paper money ? Can it ever be good money ? Can it ever be made to circulate on an equality with coin ? That depends on the amount of money-work to be done and the amount of money-force already in existence with which to do it. The amount of money-work is determined by the amount of exchange required to carry on the business of the country. And the money-force is determined by the amount of money in circulation and the rapidity of that circulation. If the

money-work increases, other things remaining the same, the money supply must be increased if prices are not to be greatly advanced. And the money supply can be and often has been increased by inconvertible paper money which has circulated on a par with the actual coin.

Depression does not necessarily result from inconvertibility, but from excessive issues. It might result from an over-issue of coin as well as of inconvertible paper money. Suppose \$100,000 in gold represented the value of all the commodities in a given community and the amount of gold to be increased to \$200,000. Then it would take two gold dollars to purchase what one purchased before. "There can be no depreciation of money," says Ricardo, "but from excess. However debased (by seigniorage) a coinage may become, it will preserve its mint value—that is to say, it will pass in circulation for the value of the bullion which it ought to contain, provided it be not in too great abundance." This assertion is equally true of inconvertible paper money. For it is practically debased coin with the seigniorage carried to one hundred per cent.

Granting, then, that inconvertible paper money may for a time be good money, is it safe or wise for a nation to resort to it as a means for increasing its money supply? We answer unhesitatingly, no. The evil results of such a method of supplying the demand for money far outweighs any supposed temporary benefit. It has usually led, and probably will lead, not only to gross injustice to large numbers of individuals, but to industrial disasters of the most appalling sort. When once a people begins the process of making money of practically no cost take the place of money of high cost it is impossible to stop within any reasonable limit. All

the selfish interests of the hour clamor for it. Recognizing that the payment of debts is a disagreeable necessity, the people persistently demand that they be scaled down by this method. Every new exigency in the fiscal policy of the government keeps calling for more. The longer the regime continues the greater the danger becomes. Having no international value inconvertible paper money finds no outlet in international commerce. By adopting it a country loses all the advantages of an automatic regulation of the money supply. An over-issue will not flow away to other countries as other money will that has an inherent value. When the system is once adopted the danger from inflation increases rather than diminishes with the lapse of time. Soon distrust sets in, trade is thrown into a panic, and the ruinous results of the system are felt by the whole people, and often for many generations. "It is my firm belief," says Francis A. Walker, who strongly advocates the view of inconvertible paper money taken above, "that the issue of inconvertible paper money is never a sound measure of finance, no matter what the stress of the national exigency may be. I believe it to be as surely a mistaken policy as the resort of an athlete to the brandy bottle. It means mischief always. It is to my mind the highest proof ever afforded of the supreme intellectual greatness of Napoleon, that during twenty years of continuous war, often single-handed against half the powers of Europe, he never was once drawn to this desperate and delusive resort."

Competent scholars tell us that during our late civil war "no necessity for the issue of paper money need have arrived." It could easily have been avoided by selling bonds at their market value. Some of the evil

effects that resulted from the inevitable depreciation are given by James Lawrence Laughlin as follows : “(1) The expenses of the government were increased by the rise in prices, so that (2) our national debt became hundreds of millions larger than it need have been ; (3) a vicious speculation in gold began, leading to the unsettling of legitimate trade and to greater variations in prices ; (4) the existence of depreciated paper later gave rise to all the dishonest schemes for paying the coin obligations of the United States in cheap issues to the ruin of its credit and honor ; and (5) it has practically become a settled part of our circulation and a possible source of danger.” That the severity of the panic of 1873 was chiefly due to it there can be no reasonable doubt.

In this discussion of the function of paper money in a state we have intentionally avoided all reference to the bank note. But before we can take up that subject to advantage we need to consider some of the general relations of the government to banks. Every country whose industrial organization has not remained in the most rudimentary state has early made use of the service of banks. A bank stands related to the circulation of money as books do to the circulation of ideas. Like them it does not create what it circulates, yet its existence is indispensable to a general circulation of money. Liberal provision should therefore be made by every government for the establishment of places for the safe deposit of money, for effecting the exchange of money, and for easily obtaining the loan of money. Modern banks may be divided into two classes ; money banks and credit banks. “The money bank was the original form of a bank and that from which the credit bank was gradually developed.” When the deposits

became loans the step was taken from the money bank proper to the credit bank or bank of issue. Experience shows that banks can keep their promise to pay the debt which they incur when they accept a deposit and still loan out a large part of that deposit. It also shows that if a bank has properly invested its superfluous capital and has a large capital stock it may issue bonds in which the bank acknowledges itself debtor for the stated sum and promises to pay it on demand of the presenter. These bonds are bank notes. They are not metallic money or paper money properly so-called. Yet they combine all the convenience of paper money, and to a degree also its cheapness with the stability of value that characterizes coin. Because of these qualities the bank-note system was long ago adopted by the United States and many of the States of Northern Europe, and it has largely contributed to make them the most wealthy and prosperous nations on the globe.

Such being the nature and function of the bank note in the industrial economy of a nation, the system that is adopted for securing its constant and immediate redeemability in coin becomes a matter of great moment. To oblige a bank to base its notes, dollar for dollar, on a cash reserve would be to reject all that is peculiar to modern banking, and, besides, by destroying all the profit, would take away from the bank all motive for making the issue at all. Equally objectionable is the system of basing these notes on real estate and mortgage security, as stocks and bonds. For even if they afford a safe security, which is often questionable, it is difficult, especially in large quantities, to convert them into cash. The only rational and scientific system is the so-called banking security—a combination of cash



reserve and of securities easily convertible into cash, such as discounted bills and lombard claims. All shares in joint-stock companies and speculative stocks of every description should be rigorously excluded from such security. This is demanded by the nature of the notes as obligations payable in cash on demand. Only on the basis of quick and easy convertibility in the loans can there be any real guarantee that bank money will not degenerate into mere inconvertible paper money of little or no real value, as it has so often done in many of the states of the Union in the past.

In order to insure the country against the dangers that undeniably surround all note circulation and to keep our bank money always and everywhere good money, the right to issue such notes in our day should be granted exclusively to national banks. The constitution of the United States provides that no state shall emit bills of credit. But it was decided by the Supreme Court, in 1836, that while the state could not issue circulating notes, it could authorize a private corporation to do it, and thus it came about that in 1861 the number of state banks had increased to 1601, with a capital of \$429,000,000, and "more than ten thousand different kinds of notes were in circulation, issued by the authority of thirty-four different states, under more than forty different statutes." The injury to the business of the country from such a state of affairs is almost beyond estimate. In 1859 the average cost of southern and western exchange upon New York was not less than 1 to 1½ per cent. The report of the comptroller of the currency makes the amount of exchange drawn on New York during 1891, \$7,836,000,000. If the rate of 1859 should be restored the loss in exchange annually would be over \$100,000,000. This leaves out of con-

sideration all other ports and says nothing of the issue of those banks that would be without any credit at all.

Now, under the national bank system the notes are guaranteed by the government. And if the proceeds of the United States bonds that it requires the bank to deposit in the Treasury as a security for its circulation be not enough to reimburse the government for its loss, it has the first lien on all the assets of the bank. The notes are receivable by the government for all dues except duties on imports, and payable for all debts except interest on the public debt and in the redemption of national bank notes. A tax of 10 per cent. on the issue of any private person or state bank practically excludes all other bank notes from circulation and gives the country the immense advantage of a homogeneous currency, fully secured, redeemable at one common point, and free from the enormous annual waste of a fluctuating exchange. To restore to each state the right again to authorize the issue of bank notes would be to return to the wildcat currency of ante-bellum times. If reason and experience teach us anything on this subject, it is that the people of the United States should never permit, under any circumstances, the forty-four different states of our Union, or any one of them, to adopt so harmful a course. Some modification of our present system must, of course, shortly be made. For most of the bonds now used as the basis of circulation are fast being redeemed and will soon go out of existence altogether.

The plan recently submitted to Congress by that eminent financier, John Jay Knox, late comptroller of the currency, seems to be most rational and just. For in every way it conforms to the four criteria of good money: that it be safe, elastic, convertible and uni-

form. The plan, as stated by himself in *The Forum* for February, 1892, is that national banks organized in this country should be allowed to issue circulation upon 75 per cent of their capital stock. A bank of \$400,000 capital should have the right to issue circulation to the amount of \$300,000. Half of that circulation (\$150,000) would be secured by gold or silver coin or bullion, or, if you please, by the public debt, until the maturity of the 4 per cents in 1907. So far the circulation would be based on security similar to that of the Bank of England. The other portion of the circulation would be secured by a safety fund. The advantages of this plan he outlines as follows: "It provides, in the first place, an issue of circulation for only three fourths of the capital; secondly, absolute security for 50 per cent. of that amount; and, thirdly, a rapidly increasing and abundant safety-fund as a security for 50 per cent of the circulation; and, finally, a pledge of all the assets of an insolvent bank and the individual liability of its stockholders for the ultimate redemption of its notes."

It is undoubtedly the duty of our government to do something to supply the constantly increasing need of money. The demand of the West and South for more money and less expensive money is a perfectly rational demand, and the best way to supply this demand in a rich and prosperous country like ours under present conditions is not by the free coinage of silver or the manufacture of inconvertible paper money, but by fostering and developing in some such way as indicated above the present system of national bank notes.

In their application to the legislature of Massachusetts in 1816 for an act of incorporation, the founders of the first savings bank in the United States well express their purpose in these words: "It is not by the

alms of the wealthy that the good of the lower classes can be generally promoted. By such donations encouragement is far oftener given to idleness and hypocrisy than aid to suffering worth. He is the most effective benefactor to the poor who encourages them in habits of industry, sobriety, and frugality." The "banks of the poor" that have since sprung up all over the country in furtherance of this end have contributed more than can be told to distribute property among the masses of the people, discourage pauperism, and sharpen the mental and moral powers. The little weekly saving of labor can here be converted into capital and made to produce a revenue as large as is consistent with safety of investment. And both principle and profit can be drawn out for use at stated intervals or reinvested as new capital and go on increasing as before.

Thus it has come about that these savings institutions have grown in the north Atlantic states alone from one in 1816 with a handful of depositors to over 600 with nearly a billion of deposits, and with a number of depositors not much less than two and a half millions, the Bowery Savings Bank in New York City alone having nearly 90,000 depositors, and a total asset of \$40,000,000. The duty of the State to exercise the strictest supervision over the investments and practices of these banks cannot be questioned. For the depositors have no voice in the management of their funds or in the election of the trustees. The responsibility for their safe conduct is almost wholly with the government. The laws concerning the conditions of their establishment should be plain and explicit, as well as those relating to the kind of investments they shall be allowed to make, and the times and method of their

official reports. Full authority should be invested in superintendents and commissioners properly to administer these laws, and severe penalties should be inflicted for failing to exercise this authority in case of need. "The general savings-bank law of 1875, with its amendments, in the state of New York is undoubtedly," says John P. Townsend, a high authority on this subject, "the best in existence in this country—and it would be for the interests of all if this was general in every state."

In our country, postal savings banks have now become a necessity and should be at once established by the government. They have been in successful operation in England since 1861. In other European countries also they have proved to be of great benefit. They are especially needed in small towns and villages where the patronage would be insufficient to justify the establishment of any other kind of a bank. Being operated in connection with the money-order department, their administration would add but little to the present expenses of the government.

Penny savings banks in the public schools should also be fostered and encouraged. For the best way to cultivate a spirit of economy in a people is to teach it to them in their youth. Every child should early learn by daily experience to practise the well-known motto of Benjamin Franklin: "Save the pennies." That the government can help immensely towards the accomplishment of this end through the public school is no longer a question after the decided success of the scheme in so many of the most civilized quarters of the earth. In no country is its adoption more necessary than in our own, in order to counteract the evil example of the luxurious and extravagant modes of life

adopted by the mass of the people the moment they begin to prosper.

Few persons are aware of the fact that until the middle of the sixteenth century, the taking of interest for the use of money was regarded by nearly all civilized nations as a crime. This state of affairs is said to be due to a misapplication of a provision of the Mosaic code concerning the receipt of interest and to a sentence in Aristotle bearing on the same point. To John Calvin is ascribed the credit of first showing the falsity of this position and justifying the present universal practice. For while it is true, as Aristotle says, that money does not produce money, yet it may be exchanged for those things that do produce their like, such as wheat and corn, or for other things that help to increase wealth. It is therefore as morally right to take interest for its use as to take rent for land or wages for labor.

England was the first country to adopt the new views, and in 1546 she passed her first law allowing the collection of interest for the use of money and fixing the maximum rate. This was at first fixed at 10 per cent., was afterwards gradually reduced to 5 per cent., and finally abolished altogether, the payment for a loan being as much at the option of the parties as the matter of rent. Massachusetts long ago followed the example of England, and there seems to be no good reason why every one of our several commonwealths should not do the same. For we do not live in a country where borrowers are generally persons in financial distress, and where the supply of money is either wholly unknown or monopolized by a few unprincipled spirits. In the great majority of cases in our day those who seek a loan do it to enlarge their business or



engage in some new venture with the hope of extra profit, and are no more at the mercy of the money-lender than of those who rent land or dwellings.

Furthermore, usury laws, however stringent they may be, are easily evaded and always have been when the inducement was a decidedly strong one. Some of the ways of doing it are summarized by another as follows: "1. Fictitious deposits. The bank scrupulously respects the legal prescription of a maximum rate of interest, but its customers make up the difference by keeping 'a line of deposits.' 2. Commissions and fictitious exchanges. Whenever capital is in great demand, especially in times of commercial pressure, it is customary for bill brokers to charge 'commissions' which are really nothing but additional interest, and for banks to create fictitious 'exchange' by making notes payable in other places and by charging a percentage on the transfer of the funds, which also is disguised interest. 3. Another way in which the lender may obtain the advantage of which the law would deprive him is by compelling the would-be borrower to take the capital for a longer term than actually required."

The trade and manufacture of the world in our time is carried on chiefly by means of borrowed capital. Notes are made and paid by tens of thousands every day. If the usury laws were not violated when a sudden demand arose for loans, debtors would often, through no fault of their own, be plunged into commercial ruin. Not being able to secure the needed loan at the required maximum rate, they would be forced to sell their goods at once almost without regard to cost. Thus the effect of a legal rate is to stop loans at the very time when they are most essential to the

business public. If the government should allow our banks to adopt some such sliding scale as exists at the great banks of Europe, where the rate of interest rises and falls with the demand, the interests of business would be greatly furthered thereby. Already in New York the penalties have been removed for exceeding the legal rate on call loans, and the extreme fluctuations in that market, where the rate has several times in a crisis risen to 400 or 500 per cent. per annum, have been greatly mitigated by so doing.

The many advantages to the trade and commerce of the world that would come from an international medium of exchange were never more clearly seen or fully realized than at present, and many attempts have been made to bring about the adoption of such a standard ever since the first international conference on the subject at Paris in 1867. At that time, although England from 1816 had used gold only as a legal tender, the nations of the Latin Union, viz., France, Italy, Belgium, and Switzerland, allowed the unlimited coinage of gold and silver at the ratio of 1:15½. This fact together with the demand for silver in other European countries, the United States, and the far East, had kept gold and silver always convertible at that rate. Soon after this conference, however, Germany and the Scandinavian Union changed from a silver to a gold standard. France immediately put a limit upon the coinage of silver and the United States did the same in 1873. So many other nations have since discarded silver and adopted the exclusive use of gold that the value of gold has continually risen and the value of silver has continually declined. So that to-day gold stands related to silver about as 1:30 instead of as formerly 1:15½. Yet silver has depreciated

only a little as regards the standard commodities it will purchase, while gold has appreciated from 30 to 35 per cent. some would say.

Mr. Balfour, in a recent speech at Manchester, well defined the requirements of an international currency when he said: "We require that it shall be a convenient medium of exchange between different countries, and we require of it that it shall be a fair and permanent record of obligations over long periods of time." Those who hold that gold alone fulfils these requirements argue that the value of money cannot be settled by law, but is always determined by the cost of production; that if a nation should try to adopt a double standard, payments would always be made in the cheaper metal in accordance with Gresham's law that "bad money always drives out good money," and it would practically have a single standard; that gold fluctuates in value far less than any other available metal and therefore furnishes the most stable kind of money; and, finally, that the most advanced and powerful nations have already an exclusive gold standard (this gold reserve amounting to date to over \$1,500,000,000) and cannot be persuaded to change to any other.

To these arguments bimetallists reply that the State very largely determines the value of money. By making a substance a legal tender it increases the demand for that substance and this, within certain limits, determines what shall be its value; that the cost of production has very little to do with the value of money, for this is determined by the amount of money there is with which to do the work of money; that if gold and silver at the same fixed ratio were once the standard over the whole earth there would be no such thing as "good

money " and " bad money," and Gresham's law would have no application : that gold and silver combined would give a greater stability of value to money than gold alone, as the fluctuations would extend over a wider field and those in one metal would, to a large degree, counteract those in the other ; that the present and prospective supply of gold does not and cannot meet the legitimate demands for money ; that if bimetallism is not adopted prices must soon fall to such an extent as greatly to derange trade and commerce ; and lastly, that the desire of certain nations to have an exclusive gold standard is chiefly due to the fact that they already possess the gold supply.

The possibility of bimetallism, if all nations were agreed, is now admitted by many monometallists, but the probability of such an agreement, for the present at least, seems very slight. The creditor nations, such as England, France, and Germany, naturally prefer a gold standard, and the debtor nations as naturally prefer a bimetallic standard. The conferences of 1878, 1881, and 1892 have failed to agree upon a common standard chiefly for this reason. And the failure clearly teaches us that we must, under present conditions, settle our monetary policy for ourselves without the aid of Europe. As a people we belong to the debtor class. England alone has over \$1,000,000,000 invested within our borders. It would be a great injury to debtors—especially the agricultural classes—and the nation as a whole for us to join with the nations of Northern Europe and increase still further the demand for gold which already exceeds the supply of the world. But we should not adopt the free coinage of silver, for that would mean paying debts in dollars worth less than those in which the debts were contracted, just as an exclusive gold

standard means paying them in dollars worth more.

America can just as properly give an "artificial value" to silver in favor of her interests as England can give it to gold in favor of hers, as Mr. Gibbs, ex-governor of the Bank of England, has so conclusively shown.

The endeavor of our national government should be to keep the purchasing power of these metals as nearly uniform as possible, making such changes from time to time in their ratio as the situation comes to require.

The demand for silver is almost certain greatly to increase even without an international agreement. As soon as India pays off her English loans she will absorb a vast amount of the white metal. China and the far East have no real money. Soon the 600,000,000 inhabitants of that region will be calling for silver, and no one can estimate the amount that will be needed in Africa when that country begins to yield to the demands of a civilized life. Taking into consideration also the increasing use of silver, sure to come as the South American states more fully develop, it is not hard to foresee the gradual restoration of silver to its, perhaps, old place in the currency of the world. Till then, it is not at all probable that the gold-using nations of Northern Europe will agree on any just basis to remonetize silver and help in that way to establish a universal medium of exchange. Meanwhile the adoption of some such plan as that of an international clearing-house would injure no one, would be a positive benefit to all classes, and help on the commercial progress of the world.

## CHAPTER IX.

### THE TREATMENT OF CRIMINALS.

IN the present condition of affairs, in all lands, even after everything has been done that can be done to instruct the people as to what the public good requires, we always find two classes : those who conform their conduct to the demands of the government and those who fail to conform. No government, therefore, can treat all its subjects exactly alike. It must discriminate. While it freely bestows its privileges upon those who obey its mandates, it cannot justly grant them to those who do not. Every disobedient subject it must deprive, in some degree at least, of their possession and use. Hence every demand of the government should be accompanied by a penalty for non-compliance with that demand. A reward for obedience is not necessary, for obedience is always accompanied by its own reward—that is, by a continued enjoyment of the blessings of the present. But every person who violates the conditions upon which he was admitted into the full fellowship of the State should have an appropriate limit put upon his enjoyment of that fellowship.

Those whose inability to conform to the requirements of the government is one of nature, not of will, should have their freedom of action limited in accordance with that fact. While the State should do its best to pre-



vent the organism of which they are still members from suffering any unnecessary injury on their account, it should give them all the assistance the circumstances will allow in coming as speedily as may be to the normal use and enjoyment of all their powers.

But a far more difficult question for us to answer is, how shall a State treat those who wilfully violate its statutes? What shall be done with those who are both mentally capable of understanding its decrees and physically able to conform to them, but still as a matter of fact act directly counter to their requirements and knowingly set the public good at naught? Four different theories of the way to treat such criminals have their respective advocates. For brevity's sake they may be designated as follows: 1. The Punishment theory; 2. The Protection theory; 3. The Example theory; and 4. The Reformation theory. Let us examine briefly each of these theories and see what ground we have, if any, for not accepting any one of them as an adequate solution of the problem we have under consideration.

The first theory claims that the true way to treat criminals is on the principle of the vindication of the law. Let a clear and definite penalty for non-compliance accompany every statute, and let it compensate as nearly as may be for the injury inflicted by the disobedient act. Let the one upon whom the penalty falls serve out his time in due form and then return to his place in society, and assume anew its rights and duties. If the transgression is repeated, repeat the penalty. The State has nothing to do with anything but the actual overt act. Even though the State may have every reason to suppose that the released criminal, at the first opportunity, will again transgress, yet it has no

right forcibly to restrain him, even before the twentieth transgression, provided, of course, that all previous offences have had their just recompense. The State has done its whole duty and reached the limit of its right when it makes its statutes plain and its penalty plain, and then in case of non-compliance impartially metes out the retribution that it has announced in its decree as sure to follow.

Most of the criminal codes of the world from the earliest times have been based on this theory. That he who murders should himself suffer death, that he who strikes another should himself be struck, says Æschylus, is the most ancient of all laws. Some writers of to-day in their opposition to this theory go so far as to affirm that governments have no right whatever to punish. They assert that reason is against it, and that the Bible expressly affirms that vengeance has been exclusively reserved to the Almighty and not delegated in any degree to human governments. They ignore the fact that along with the right to rule necessarily goes the right to punish ; that the State, by the very act of requiring its subjects to obey its mandates, is compelled to punish those who refuse to do so. Even when it forcibly reforms it punishes.

They also ignore the fact that the very Book that exhorts its readers to avenge not themselves on the ground that " Vengeance is mine, I will repay, saith the Lord," also enjoins upon them to submit themselves " unto governors, as sent by him for vengeance upon evil-doers," and expressly affirms the doctrine that the ruler " is the minister of God, and avenger for wrath to him that doeth evil." The fact that full and adequate punishment can alone be inflicted by the Almighty does not at all relieve the State of treating

its citizens to the best of its ability according to their deserts.

Havelock Ellis, in his recent (1890) able treatise on *The Criminal*, says: "In France, in Germany, in Italy, in Belgium, in Spain, in the United States the tide of criminality is becoming higher, steadily and rapidly." Even in England, where drunkenness is not a crime, as well as in the rest of Great Britain, statistics tell us, he says, that "there is a real increase, in proportion to the population, in the more serious kinds of crime." Fred H. Wines, under whose direction the statistics of pauperism and crime for the United States Census of 1880 were gathered, says in a paper published in 1888: "When the last census was taken, in 1880, there were, in all our prisons of every grade, very nearly sixty thousand prisoners, besides more than eleven thousand inmates of juvenile reformatories, who are virtually prisoners. It is probable that the next census may show a total prison population of seventy-five or eighty thousand men, women, and children incarcerated on some criminal charge. [The census for 1890 makes the number 79,617.] These prisoners, however, constitute but a fraction of the great army of criminals. They have been aptly compared to prisoners of war. Their capture does not put a stop to the operation of the army in the field, whose number no man knows, but which is engaged in a never-ending, widespread, and more or less thoroughly organized attack upon property and social order and security."

Allowing with some penologists that the increase in crime is in some respects more apparent than real, yet with these facts before us is it not clear that the theory of the vindication of the law does not and cannot reduce crime to the minimum? Is it not also clear, there-

fore, that punishment ought not to be the only thing the State should attempt to accomplish in dealing with crime?

The second theory proposed for the treatment of criminals is the Protection theory. This theory, as often interpreted, teaches that when the offence is once committed no amount of punishment can ever make the injury good. Even to attempt to inflict punishment is to act on the principle that two wrongs make a right. While nothing can be done by the State to make amends for the past, it can do almost everything to protect itself from injury in the future. It should consign every criminal to temporary or perpetual elimination from society solely as the future good of the State requires. It may even ignore his crime altogether if there is good ground for believing that he will not again transgress.

To this theory it is objected, and reasonably, that it makes no proper discrimination between the criminal and the crazy, between those who can but will not, and those who would but cannot, obey the mandates of the government.

To treat all criminals as though they were merely insane, besides doing violence to the actual facts, would tend to multiply greatly their number rather than reduce it to the minimum.

Unless the people see that the criminal is treated, at least to some extent, according to his past voluntary conduct, they will lose their respect for the government and so will all those with whom they come in contact.

This leads us to the third proposed method, that of making the criminal simply an example to the community of the evil effects of disobedience to the laws. Those who are disposed to wrong-doing are to see for

themselves the fact that "the way of the transgressor is hard." The criminal's past conduct is no longer to be considered in the matter. We are simply to ask ourselves what will be the effect upon society in general of the infliction of the penalty.

But how are we going to answer the question on this theory? Why make an example of this person rather than some other? Could the infliction of a penalty have any deterrent effect at all upon the people unless it was supposed that the person punished was receiving his actual deserts? Would it not have just the opposite effect if they thought otherwise?

We come next to consider the last of these four theories. The thing to do with the offender is to reform him, to bring him back again into normal relations to his fellows. The State should not attempt to vindicate the law. It should leave that to a higher power. But it should concentrate all its energies solely upon the matter of reformation. Nothing should be done to the criminal that does not tend to this end.

But when we think of it with any care do we not see that no suffering or restraint would have any tendency to reclaim the offender if it were not deserved to begin with? And do we not also see that the supremacy of the government being the one supreme good of the community, neither the reformation nor the life of the one who assails it should prevent the government from seeing to it that this sovereignty is adequately maintained?

It is not to be denied, I think, that all of these theories as to the treatment of criminals have their excellencies as truly as their defects. For no one of them is wholly true or wholly false. The trouble with them

is that they each deal with only one side or one phase of the matter, and do not take a point of view broad enough to cover all the facts. Their common defects are due not so much to inadequate views of human nature, as to a wrong conception of the State, and no satisfactory solution of the problem before us is possible until this false conception gives way to the true one.

The true idea of the State is that of an organism. If any member of the organism prospers, all to some extent receive the benefit; if any is injured, all to some extent suffer loss. That is, whatever affects the hand or foot affects the whole body. The State in dealing with an offender is still dealing with a part of itself. It must never treat him as an outside party. It must never degrade him simply for the sake of degrading, but is always to lead him, if possible, to come to himself. The offender by his own act has cut himself off from his normal connection with the organism. He has deprived himself of the free and full enjoyment of the privileges of the brotherhood of which he is a member, and the penalty that is a just penalty is intended to make him aware of this fact. It is evident, therefore, that the restraint or suffering that the State imposes on the offending member must be so inflicted as to accomplish all the ends proposed in the four theories already discussed. It must vindicate the right of the State to the supreme control of the action of all its subjects and protect itself from further injury, while at the same time it makes a proper example of the offender to others, and does all it can to bring him back to his normal relations to his fellows.

The only effectual way of doing this is by the system of indeterminate sentences. By this we mean that no person who has violated the rights of the brotherhood



should be restored to full membership until he has given good evidence of a change of disposition. So long as he continues to be incapable of appreciating those rights or unwilling to conform to them, he certainly should be deprived of their enjoyment. The judge who tries the offender should be required to fix the minimum of imprisonment, and furnish papers clearly stating the chief characteristics of his case. But the ending of the term of incarceration should not be made to depend upon the sentence of the court. It should depend entirely on the person's fitness to return to his former status. So long as a young man can count on being half the time the terror of society and half the time in jail, the career of crime will have its devotees, and many who take up the profession and pursue it with zest will come to be regarded by themselves, as well as by others, heroes of no inferior sort.

The only philosophical way of treating the matter is to say to the criminal: "We leave the period of your imprisonment mainly in your own hands. If good evidence exists that you have determined to lead a virtuous and useful life, it will be short; if such evidence does not exist, it will be long. If no adequate change of disposition in your case is ever discernible, then for your own sake and the sake of society you shall pass the remainder of your days where you can do the least harm." Of course this system has its difficulties, but they are not much greater than in the case of the insane. One of the worst phases of the present system is that when a convict is released from prison no one will trust him. The doors of employment and sympathy are closed in his face. By this system of indeterminate sentences he comes out with a certificate

of commendation, with a different set of habits and with the probabilities, just the opposite of what they now are, that he will be a good citizen.

Along with the system of indeterminate sentences and as an essential part of it should go compulsory labor. Nothing is more unreasonable than to allow a man by committing a crime to compel the rest of the community to support him in idleness. He should on the contrary be himself compelled to do all in his power to recompense society for his support. Furthermore, it is both dangerous and demoralizing to allow prisoners to be idle. It is a bad thing for any person to live without work, for it inevitably leads to physical and psychical degeneracy, and makes it exceedingly likely that at the first opportunity moral corruption will follow. Criminals are far more easily governed if they are made to labor, and in no other way can they be disciplined to self-control, or fitted to earn, when released, an honest livelihood.

There is little danger in our day that prison administration in this respect will be cruel. In fact, the danger is quite in the opposite direction. Most criminals are better fed, better clothed, and better sheltered in prison than out of it. "Hard labor," says an expert on this subject, "is such that no prisoner could get a living outside if he did not work harder." It is stated on good authority that the majority of the inmates of some of our county jails during the winter are persons who have committed some petty offence for the sake of having little to do and a comfortable home in the city during the cold weather. An indeterminate sentence and compulsory labor would greatly lessen this evil, if not exterminate it altogether.

The labor required by the State should not, however,

be penal labor, labor merely for labor's sake, but productive labor, where energy is expended in supplying actual want. The brutalizing effects of penal labor cannot fail to be far more pernicious than all its supposed advantages. The criminal should be led to see that his labor is accomplishing some useful result. The methods of work and the reward to the worker should be the same for prisoners as for free labor, and the goods they manufacture should be sold at not less than the current rates for articles of equal quality and workmanship. In the case of incorrigibles (who, according to Superintendent Brockway, number about one third of the total), all the wages paid should go directly to the State. The tax-payers, who support them, have an unrestricted claim upon the products of their labor. But in the case of those who are soon to mingle in society and again to be entrusted with all the rights and privileges of a citizen, a small portion of the earnings of the especially industrious may reasonably be set aside for the time of liberation, or to enable something to be done, if needs be, for the wretched family that crime has thrown upon the State by depriving it of its sole means of support.

In fine, the prison should be changed into a great industrial factory, and by force be made as nearly self-supporting as the circumstances allow. A central board of managers, appointed, of course, for their fitness and not because of party influence, should determine what industries are to be pursued in each prison, should classify the prisoners with this end in view, and should be exclusively responsible for general results, the labor required and the wages paid being, as said above, the same within the prison walls as they would be without. Unremitting, systematic work is the

criminal's first and greatest need. He is a criminal very likely because of the lack of this habit. By compelling him to contribute to his own support and the support of his family, if he has one, we best prepare him for the time of liberation and supply the most effective test of determining when that time has arrived.

The State should also compel the criminal to study. It should do what it can under the circumstances to develop the mind as well as the body. If the criminal has not already been taught to read and write, that, of course, should be first attended to, and then should follow instruction in those branches that will best develop his mental powers and best help him to understand his relations to the person and property of his fellows, as well as his duties and obligations to God. Secular knowledge is of little account to any man without moral and religious. In fact, such knowledge may be a great injury to a person by only sharpening his wits to make him all the more dangerous to his own well-being and the well-being of his fellows. This is doubly true of the criminal. What he needs to have drilled into him, next to a habit of work, is some rational conception of his duties to others and to God. Nothing else will so cultivate a reverence for law or help a person to a wise use of hope and fear. The prisoner is cut off by the nature of the case from the possibility of getting this instruction from without. It should therefore be given from within and no day should pass without some reminder of these duties being vividly placed before them. In fact, it may be truly said that every prison should have an established religion. By this we mean that the prisoners should be compelled to support out of their earnings a place for non-sectarian religious instruction and worship. They

should be obliged to attend the one and left free to follow their own option as to the other.

Inasmuch as there exist in the world criminals by birth and environment, as well as criminals by occasion, the State should not always limit itself in its treatment of criminals to the overt act. The embryonic criminal is just as truly a source of solicitude to the State as the fully developed. If natural science has taught us anything, it has taught us to make much of hereditary descent. The children of criminals, certainly of incorrigible criminals, are almost sure to be criminals. They see nothing of a life of virtue and cannot reasonably be expected to do otherwise than follow the parental example. The State, knowing this, should come to the rescue. If the State cannot make the slums respectable it should take the children out of the slums and give them a chance to lead decent lives. "It does not need demonstration," says Charles Dudley Warner, "that no country can go on to prosperity with society rotting at the foundations. A good many noble men and women are devoting their lives to the rescue of these children, but it is only pecking round the edges of a great evil. The whole community must take up the matter seriously. I suppose it will do this when it sees that it is more economical, costly as it may be, to deal with nascent crime than with full-blown crime."

The time has passed for the State to attempt to dispose of any class of its criminals by a system of transportation. It is wrong in principle and never has been a success. England has abandoned it after a long trial as demoralizing to the convicts themselves, injurious to the country to which they are sent, and attended with too great expense ; besides multiplying crime at

home, the hope of being transported actually stimulating to new crimes, rather than deterring from old ones. The French penal colony at New Caledonia, for essentially the same reason, is not likely much longer to continue. The State ignobly shirks its duty to the vicious as well as the virtuous if it simply puts its criminals out of sight and leaves them to revel in their own abominations.

The State should tighten its hold upon its criminals, not relax it. It should fight out its civil wars on its own territory. The place to quell rebellion is where it originates. The State cannot allow crime and criminals to keep on multiplying, and expect to atone for its negligence by any such subterfuge as a free ticket-of-leave. No sane person would ever think of treating a sore on his body by any such method, and it will not work any better with the body-politic. If the diseased member offend you—is a perpetual injury and reproach to the whole body—cut it off and cast it from you, and at the same time see to it that it is not left anywhere above the sod to pollute the fresh air of heaven with its foul odor.

The State has an absolute control of all its members. The life as well as the liberty and property of every one of its citizens must be given up whenever the good of the State calls for the sacrifice. If this is true of the virtuous and worthy, how much more is it true of the vicious and unworthy? The question of capital punishment for certain crimes is one of expediency merely. We must always act on the principle that the life of humanity is of more value than that of any individual. It is held by many that while the penalties for crimes during the last fifty years have constantly been growing milder, the number of crimes of the most



serious character has constantly been increasing much faster than the population. Many of the countries that abolished the death penalty have returned to it because of this fact. The principle of natural selection in biology seems here clearly to teach us the lesson that the best way to purify the race is by the sure and absolute elimination of those individuals who show by their conduct that they will not assimilate.

One of the most imperative needs of our times, at least in America, is a more efficient system for detecting crime, and for the speedy conviction of the guilty. Ex-Warden Brush of Sing Sing prison puts it none too strongly when he says: "One of the greatest evils of our criminal system to-day is that the protection which the law is supposed to throw around the innocent is practically given to the criminal." The maxims upon which our present system largely rests were adopted when the oppression was from above, not as now from below. Then, the agents of the crown despoiled the people and threatened their lives. In our day professional burglars and assassins are the ones who keep society in terror. The New Orleans tragedy of March, 1891, is not an impossibility in any one of our great cities, and earnestly admonishes us to be on our guard. The maxim that it is better that ninety-nine guilty persons should go unpunished than that one innocent person should suffer, as ordinarily interpreted, cannot bear the strain of actual application. "The thirty thousand habitual criminals," according to Colonel Dawson, "who every night prowl about the streets of New York," give us a good example of its practical results. The position seems almost equally untenable that no alleged criminal should be compelled to testify against himself. Indeed, it is extremely doubtful

whether we shall ever get the mastery of this matter until we adopt the method of the French, and say to every suspected offender: "Here are the charges and the evidence; show that you are innocent."

The trouble with the present order of things is not so much with our courts and judges as it is with our laws. The first eight amendments to our national constitution, adopted to protect the people from the government, have carried us away from our purpose. They need a revision. We ought to have some amendments to protect the government from the people. We need a set of laws that will not only prevent all oppression of the innocent, but will also see to it that the guilty are promptly apprehended and made to suffer. Then with a universal application of the principle of an indeterminate sentence beyond a certain fixed minimum, compulsory labor, and compulsory education, we may hope to stay the rising tide of crime and do far more than can otherwise be done to free the future from its blighting influence. Away with the notion of a false philosophy that all moral evil is merely a disease. Away with the idea that the greatest criminals do not deserve imprisonment and chains, but fruits and flowers. Let us the rather keep our sympathy and our tears for the helpless victims who have innocently suffered, and their once happy homes that ruffian hands have made forever desolate.

## CHAPTER X.

### THE STATE IN ITS RELATION TO THE POOR.

It is one thing to be poor, and quite another to be a pauper. All the people in the region where Abraham Lincoln spent his boyhood days were poor, and wretchedly so, but few if any of them were dependent on the charity of the State. "At Rome," says M. Baron, "when everybody was poor, there were no paupers; it was the growing luxury of some which disclosed the poverty of others." The only forms of poverty that can be regarded as absolute evils are indigence and want, and it is of this kind of poverty we treat when we speak of the poor from the standpoint of the State.

A few statistics may help us to appreciate the present status of affairs on this matter. The annual expenditure of the state of New York for the relief of the poor, according to the eleventh annual report of the State Board of Charities, in 1877 was \$8,606,552.03. The total number of persons supported in the institutions of the state was 43,095, while out-door relief was given to 436,358. According to the report of the same board for 1892 the annual expenditure was \$18,228,712.57, and the number of in-door paupers was 83,667. The statistics given in the United States Census reports on this subject do not present even an

approximation to the truth concerning American pauperism. The census of 1880, for example, gives the number of inmates of almshouses in Massachusetts June 1, 1880, as 4469, and the out-door paupers as 954; while other authentic reports give the latter number for July 1, 1880, at not less than 12,000. "The average number of the out-door poor in Massachusetts," says F. B. Sanborn, the secretary of the Massachusetts Board of Charities, "is never less than three times the number in poor-houses; and has sometimes, within the past ten years, risen to be more than five times as many." The same authority estimates the number at present receiving State aid in this country at over "1,000,000 different persons during the year." In France about every fifteenth person is helped by the government at some time during the year; and in Great Britain the corresponding proportion is nearly a tenth. The annual tax that England levies for pauper support is not less than \$40,000,000. These facts illustrate how serious the pauper question has become in all lands, and how essential it is that every government in its treatment of the matter should have a wise and well-defined purpose.

The poor have existed in all ages and climes. It is only the form of the problem that has changed from generation to generation. Even the old Gracchian corn laws were devised as a measure of poor relief. When Cæsar returned from his victories over Pompey in the East, he found 320,000 persons in and about Rome partaking of this relief, and Merivale says that in the time of Augustus an equal number were dependent upon the bounty of the State. For the most part, however, among the ancients slavery took the place of pauperism, and several of the later Roman

emperors endeavored to put an end to mendicity by decreeing that all able-bodied beggars, if free, should be sold into slavery. The poor in these ancient communities were not isolated from the rich, as is commonly the case in our day, but grouped around them in such a manner as to prevent the formation of a proletariat. In the family they were the rich man's slaves. In the city they were his clients, whose number and good-will were often his stepping-stone to influence and power.

A poor man in the middle ages after the abolition of slavery attached himself to the soil he tilled as a serf, or, if he could, joined a guild or some religious order. Failing to gain admission into one of these groups, he became a professional beggar or a brigand.

It has been left to the present industrial age, however, to develop the modern pauper, and he seems to be almost an essential part of modern progress. Give to every workman the liberty to choose his trade, to change it at will, to sell his labor to whomsoever he pleases and at whatsoever price he pleases; and give to capital full liberty to change its form and destination at its own option, and we must expect lamentable crises to occur when those who are dependent on their work for a livelihood will suddenly find that there is no demand for their labor, or that their labor cannot furnish them the actual necessities of life. Add to this number those whom sickness, misfortune, and crime deprive of the means of support, and it is not difficult to account for the fact that every country, however progressive and civilized it may be, has its pauper class. In fact, the most startling instances of misery and degradation are found in the large cities where wealth most abounds. This is accounted for in part, to

be sure, by the attractive power of wealth for those in distress. But we must also allow that it is due in large measure to the methods of modern business life. For while in many ways they greatly redound to the good of society in general, and the laboring classes as a body, they undoubtedly tend to develop a large class of hopeless and helpless unfortunates in those very centres where industry most thrives.

Fully acknowledging these facts and sincerely bemoaning their attendant ills, there are many who answer the question, "What should the government do to mitigate these evils?" by saying, "Do nothing at all." They argue in support of this position that to assist the indigent and alleviate their misery is to take away the sanction that nature has put upon the duty of foresight; that if destitution, privation, and disease are no longer to be the consequences of improvidence, you destroy at once the first and principal check upon this vice; that the two causes of poverty being insufficient labor and insufficient wages, anything that artificially helps laborers to either only injures the whole class; that the work or money that is provided for the assisted is taken away from the unassisted, and thus the system tends to reduce to penury as many as it relieves; that legal charity is the most vicious of all modes of assistance, as it confers upon a man the right to plan for and demand support for his family, as well as himself, the moment his own indiscretion or neglect brings them to want. "From the moment public charity becomes regular and notorious," says another, "it becomes injurious, not only to society as a whole, but to the poor in particular; injurious to those it assists and those it does not assist; injurious both morally and physically; injurious even in proportion to the liberality of its in-



tentions and to the means it employs. If public charity were not condemned by political economy, it should be condemned by philanthropy."

In spite of these considerations, some of which ought to have great weight, the position that the government should make provision for the destitute is clearly required by the general principle of mutual helpfulness. The State is an organism in which if any member suffers all to some extent suffer. It is the duty of the State, for the good of all, to do what it can to reduce this suffering to the minimum. It should never permit any of its members to be left to no other alternative than theft or suicide. While regulating its relief so as to discourage culpable improvidence, it should not allow any one within its borders to die of starvation for lack of the actual necessities of life. Simple justice often requires that the State should provide for those of its servants who have grown infirm in its service, or for their widows and orphans. It cannot equitably leave to themselves those whom some measure of general utility has deprived of their all. It ought also to care temporarily, at least, for those whose resources have suddenly been cut off by the ravages of a great fire, a flood, or a pestilence. Prudence even may sometimes justify the helping of those whom some extraordinary depression in business has deprived of a livelihood, and whose dark discontent makes them a menace and a peril to the tranquillity of the State.

Side by side with the principle of *laissez faire, laisser passer*, and the individualism that it extols, must be put the principle of solidarity. Every State is bound to guarantee to the individuals that compose it the protection of their lives and property. And since all other blessings depend on the protection of life, every State is as truly

bound to prevent death by poverty as to suppress murder. "From this impregnable position," as Secretary Sanborn calls it, is to be developed the correct system of charitable administration for any State.

It is acknowledged that all charity, however righteous the principle upon which it is administered, however indispensable in its practice or beneficent in its effects, has its drawbacks. It always runs the risk of perpetuating poverty. It tends to benumb the feelings and cripple the will. He who is accustomed to depend on others thereby becomes less anxious and ambitious to help himself. Undoubtedly there are some in every community of whom it may well be said, as it was said of an English weaver, "They are born for nothing, nursed for nothing, reared for nothing, clothed for nothing, sick and cured for nothing, married and have children who live like their father for nothing, and when they die are buried and prayed over for nothing." And yet the State for this reason should not abandon all relief. It should the rather strive so to administer its relief as to reduce this tendency to the minimum.

No one will deny that the individual charity that is born of the heart is the most sacred and beautiful of all the forms of assistance. All will extol the charity "which, not satisfied with throwing down a few pennies under the momentary empire of pity or opportunity, goes out to meet the unfortunate, visits him in his abode, and, with delicate discernment, adjusts the aid given to the extent of the need, and dresses the wounds of misery with tact and even with tenderness." Admirable and praiseworthy as this voluntary and spontaneous charity may be, yet as a matter of fact it is too isolated and irregular to take the place of the

charity of the State. Too many cases of actual destitution escape its notice. In order to be efficacious and prudent, charity must be organized. Only thus can it obtain the resources needful for the relief of misfortune, or wisely adapt them to its manifold forms. The State, therefore, should have supreme control of all charitable institutions. It should hold itself ultimately responsible for the relief of its helpless poor, and it should see that institutions adequate in number, equipment, and location are established throughout its borders for the accomplishment of this end. In every civilized land in our day it should truly be said, as Blackstone says of Great Britain: "There is no man so indigent or wretched, but he may demand a supply sufficient for all the necessities of life from the more opulent part of the community by means of the several statutes enacted for the relief of the poor."

The system of legal charity now exists in Norway, Sweden, Russia, Denmark, Germany, Holland, Belgium, and Switzerland, as well as in Great Britain and the United States. France, while having no separate laws on the subject, contributes enormous sums every year to the support of institutions for the relief of the poor.

In the East the relief of the destitute is still treated as a purely religious duty. The sacred books of the Hindoos, the Persians, and the Jews go so far as to prescribe the amount the wealthy shall give to the poor. The Koran, without fixing a minimum, has very definite precepts on the subject.

The first serious attempt to formulate a general plan for the relief of the poor at the public charge was made by England in 1601. The act of this year, known as 43 Elizabeth, is the actual foundation of the

English poor-law system, and also in the main that of the United States. Dr. Burns, a great authority on this subject, in his *History of the Poor-Laws*, says of this famous statute that out of it "more litigation and a greater amount of revenue have arisen, with consequences more extensive and more serious in their aspect than ever were identified with any other act of Parliament or system of legislation whatever."

This statute provides for the employment, by the government, of poor children and able-bodied adults, and "for the necessary relief of the lame, impotent, old, and blind, and such other among them being poor and not able to work." A tax was levied upon every inhabitant and owner in every parish in England to support the system and carry its provisions into effect. Sixty years later the statute 14 Charles II. was passed, defining what constituted a pauper settlement, and giving the power of compulsory removal from one parish to another of poor persons not legally settled therein.

Before this time the poor had often been licensed to go begging in specified parishes, wearing a badge "both on the breast and back of their outermost garment." And even down to 1810, by a statute of William III., all persons receiving parochial relief, and their wives and children, were required, under severe penalties, to wear a badge on the shoulder of the right sleeve—a large "P" cut in red or blue cloth.

The system of farming the poor was introduced in 1722, and any person who refused to be so treated was not to be relieved at all. It frequently happened under this system that contractors were non-residents, and paid little or no attention to the performance of

their obligations. The great restraint that was placed by all the regulations of this period upon the free movement of the laboring classes was greatly to their injury, and decidedly increased the pauper class. Frauds of the gravest sort were often practised upon the poor by the parochial officers. Payments in debased or counterfeit money were not uncommon. A large part of the funds was wasted in needless and costly litigations about settlements. These and other evils led to the passing of the statute 22 George III., or the famous Gilbert's act in 1783. By this act the workhouse test of 43 Elizabeth was abolished, and any person out of employment could throw himself upon the parish until employment was found for him. If the wages received, when employed, were not sufficient to support him, he could oblige the parish to make up the deficit. This measure brought England almost to the verge of universal pauperism, at least among the laboring classes. The allowance for a child was so out of proportion to that for an adult that a man with a large family could almost support himself from these allowances without labor. Illegitimate children received more than those born in lawful wedlock, and they abounded on every hand. "Under the influence of this principle the number of the indigents constantly increased in England, and the poor-rate had reached the exorbitant sum of \$33,957,995 for a population of 13,894,574 inhabitants, which is more than \$2.50 a head. There were districts in which misery had reached such a proportion that farmers, unable to bear the burden of the poor-tax, gave up their leases; the land did not pay the cost of cultivation, and able-bodied population was left without work or wages." Sir Matthew Hale in the middle of the seventeenth

century, writing of these evils, said in behalf of the poor themselves, they "must in time prodigiously increase and overgrow the whole face of the kingdom and eat out the heart of it."

This exigency, which was one of the gravest in English history, led to the great Reform Act of 1834. The first object of this act was to raise the laboring classes out of the degradation into which the mal-administration of the laws for their relief had thrown them, and the second object was to diminish the crushing burden of the poor-rates to more reasonable limits. The old workhouse test was restored, although outdoor relief might be given to persons wholly unable to work from old age or infirmity, and to those who were in some special temporary distress. Allowances in aid of wages were abolished. A system of paid overseers was created, and severe penalties were inflicted upon those who failed to discharge properly their obligations. Illegitimacy was checked by punishing the father instead of rewarding the mother, and the laws concerning pauper settlements were so amended as to encourage the migration of laborers from place to place in search of work. Within three years after the passage of this act, the annual saving in the poor-rates amounted to \$15,000,000. And so great have been its benefits to all classes, that, with slight alteration, it has continued in operation until this day.

This brief history teaches us that any system of charity that collides with the maxim, "If any would not work, neither should he eat," is vicious in principle, and a great injury to all classes. Every able-bodied adult should be "set on work" and should be relieved of his destitution only on that basis,



The recommendations of Thiers to the French National Assembly in 1850, on public assistance, seems to be a good one—that certain public works, especially in our great cities where the poor most congregate, should be reserved for general crises, which are more or less periodic, instead of being too prodigal of them in times of prosperity; and that instead of improvising fruitless occupations for the unemployed in periods of distress, the State should hold itself in readiness in such a manner as not to be forced to wait in an emergency for plans, estimates, and votes.

Nor should the one who throws himself on the State be supported in a condition of so much comfort as he who cares for himself is able to provide. It is this adult pauper class that furnishes the most difficult and delicate problems connected with the subject of poor relief. Many philanthropic efforts that have been made in the past for assisting the poor have done more harm than good because of radical defects here. For example, some of the workshops that have been established in Paris and other cities for poor women have so reduced the wages of free operatives that they cannot any longer earn enough by working at home to support themselves in decency, especially if they have young children. It is plainly the duty of the State to limit the legal assistance of able-bodied adults to cases of actual destitution and then only in moderation, allowance being made for special emergencies which from their nature cannot come under the general rule.

The proper treatment of destitute children presents but little difficulty. Here self-support is out of the question. In no way are they responsible for their lot. The assistance of the State in their case ought to extend to their entire physical and moral life. Not content

with supplying the necessities of the body, it should especially attend to the development of the mind. This is the best and most permanent form of assistance. For it soon enables the one who receives it to dispense with all other forms. As much should be done as possible by the State to find suitable homes for children of mature years, where they will be of help to others and have an opportunity to develop by their own exertions into good and useful citizens.

Equally clear is the duty of the State with reference to the helpless poor whom sickness or infirmity has deprived of the use of their powers. Here, by the nature of the case, will be the largest field for legitimate expenditure by the State. But even this should be carried on with moderation. Public hospitals and infirmaries may be so conducted as to make people reckless of their conduct or too easily inclined to throw the sick or decrepit among them upon public charity, when they could and ought to provide for them at their own expense and in their own homes.

One of the many things the younger Pitt did in England to help on the reform of the poor-laws of his time, was to recommend, in 1796, that "an annual report should be made to Parliament, which should take on itself the duty of tracing the effect of its own system from year to year, till it should be fully matured ; that, in short, there should be a yearly poor-law budget, by which the legislature would show that they had a watchful eye upon the interests of the poorest and most neglected part of the community." Josiah Quincy recommended the same plan to the legislature of Massachusetts in 1821, but it was more than forty years before it was acted on and the first board of charities called into being. The system is now adopted in all

the principal states of the Union, and has become an indispensable part of every efficient scheme of poor-relief.

Pauperism in America is quite a different thing from pauperism in England or on the continent of Europe. Mr. Senior once said of the English poor-law system that it was originated in an attempt substantially to restore the expiring system of slavery. It must be admitted that its object was quite as much to preserve class distinctions and to advance the interests of the privileged few as to relieve the distress of the poor. In America, on the other hand, relief has been administered in a spirit friendly to the advancement of the poor. We did not have at the outset an hereditary pauper class, and our system has not created such a class. For the first one hundred and fifty years of our existence, though poverty often abounded, there was little or no pauperism. But from the French war of 1754 down to 1820 it was considerably developed. Good authorities estimate, however, that since that time the number of paupers in proportion to the population has not essentially increased. Had it not been for the immigration it would have been largely diminished. "Two thirds of the abundant pauperism of Massachusetts," says Sanborn, "is found among the immigrants of the last thirty years and their descendants." In New York, 50,989 of its 83,667 indoor paupers in 1892 were of foreign birth. "The foreign population of this country," says Fred H. Wines in the *United States Census Bulletin*, dated July 8, 1891, "contributes, directly or indirectly, in the persons of the foreign-born or of their immediate descendants very nearly three-fifths of all the paupers supported in almshouses." A large proportion of this

number are congenital idiots, lunatics, or incurable invalids. The recommendation of the New York State Board of Charities, in their report for 1893, that all such immigrants should be sent back to their homes is timely and should at once be enacted into a law. We are bound to protect ourselves against this class of foreigners. To this end all immigrants should be required to procure certificates of their good moral character and their physical and mental ability to provide for themselves. They should be denied admission unless they can obtain such a certificate from the local authorities of the various countries from which they come, duly authenticated by some court or officer of public record. An interstate Board of Charities should also be established to control the migration of paupers from state to state, and to save the extravagant waste of public money that is now going on in costly and unnecessary litigation over their legal settlement.

We have treated thus far of the duty of the State to relieve the destitute, but it would be a short-sighted policy that would simply prune the branches of pauperism and do nothing to tear up its root. Over two hundred years ago Sir Josiah Childs laid down the principle, that the first duty of charitable administration was to prevent the need of charity. The State should not hesitate to go beyond mere temporary relief, if it can find any way to diminish the need of relief in the future. Henry George teaches that unjust land laws are the sole cause of poverty, and the Anti-poverty Society expects to abolish pauperism by the reform of these laws. This may be one of the causes. Begging is one of the causes. The tramp evil is another, and so are improvident marriages. The earli-

est leglistors on the subject of poor-relief, very clearly showed by their laws prohibiting these evils, that they were intent on preventing pauperism as well as relieving those in distress. Stricter regulations concerning the structure and sanitary condition of tenement houses and in some countries compulsory insurance might also help to mitigate this evil. "There is great danger," says Prof. Henry W. Farnum, in the *Political Science Quarterly*, for June, 1888, "that pauper legislation will become too mechanical and will either endeavor to help all who may be in want, regardless of the cause of their want, or will draw the line so fast that many worthy persons will be left unprovided for. The great duty of the government is discrimination, and it may be quite as necessary to refuse relief where the ultimate effects of it are sure to be bad, as to give it where they are not bad."

Granting, then, the duty of the State to provide in some way for its poor, what should be the attitude of the government towards private poor-relief? In other words, to what extent should private charity be encouraged by the State? The true position on this point is that public assistance should supplement private assistance, not supersede it. It should make up for the deficiencies of private charity, not take the place of it. The government's care of the poor should depend on what is done by private effort. It should expand or contract its action according to what is left undone by private charity. It would be both immoral and irreligious for the State to discourage the development of mutual sympathy and brotherly love among its members. No wise government will do anything to lessen the beneficial effects upon the whole people of

the cultivation of these virtues by personal effort in behalf of those in distress. Yet the ultimate responsibility for the effects of any form of charity is with the State. If private charity runs to excess or is exercised with so little intelligence as to actually increase the evils it desires to mitigate, no artificial sentiment should prevent the State from restraining it, or, if need be, suppressing it altogether. Those who are actually engaged in organized charitable work not infrequently complain that charitable people are themselves often a great hindrance to the effective administration of poor-relief. No one method is always the best method for the State to pursue in caring for the poor. What is best under one set of conditions may not be best under another. To say that it will administer indoor relief alone is as adverse to the interests of the State as to say that it will administer only outdoor relief. In some places private charity may be unable to attend to one or unable to attend to either. In such cities as New York, Philadelphia, and Baltimore, it may wisely agree to look after outdoor relief, leaving the field of indoor relief to the entire care of the government.

But all relief, however administered, should look forward to the time when all necessity of relief shall disappear. For pauperism in most cases is not merely an economic condition, but a disease. It is very largely a mental and moral habit. In some countries it is an epidemic and should be checked in the same way as we stay the ravages of a pestilence. To say the evil cannot be cured is to abandon the case at the very outset. It is not enough to devise temporary remedies for the trouble, but all should be done that



science can suggest to eradicate the cause of the disease and prevent its reappearance ; as another has well said, " The fatal mistake in charity, as indeed in everything else, is when physical and temporary ends are sought in place of moral and eternal ones."

## CHAPTER XI.

### THE GOVERNMENT OF CITIES.

To discuss the question of the relation of the State to cities, is almost equal to discussing the relation of cities to themselves. For over one half of the people in most civilized lands live in cities, and in some States nearly two thirds.

The tendency of people in our day to flock to cities is one of the most striking results of modern civilization. "It is observed alike in the old countries," says Longstaff, in his *Studies in Statistics*, "with increasing populations, such as England and Germany; in a country with a stationary population, like France; in a new but populous country like the United States; but perhaps most striking of all in very newly settled countries with small populations, such as Victoria and New South Wales." Among the chief causes of this condition of things are, on the one hand, the application of machinery to agriculture and the increased use of meat as an article of diet, both greatly reducing the demand for agricultural laborers; and, on the other, the unexampled development of manufacturing industries at the chief centres, and the marvellous increase in the means of transportation. Even in Manitoba, Winnipeg alone in 1886 contained more than one fifth of all the inhabitants of the province. According to the census of New

South Wales for 1881, 57.9 per cent. of the population live in cities. But the country *par excellence* of large and rapidly growing cities is the United States of America. Chicago increased in population from 29,963 in 1850 to 1,089,850 in 1890, and St. Paul from 1338 to 133,156 in the same period.

But this marvellous growth of cities in population is not confined to the New World and the antipodes. The large towns in England have grown about as much in fifty years as those of the United States in thirty; and nothing in America can equal the growth of London in the last generation. Even in France, where the population remains almost stationary, Paris was 38.2 per cent. larger in 1886 than in 1861, and Bordeaux 47.8 per cent. In Belgium, Brussels was 109.6 per cent. greater in 1880 than in 1846, and Antwerp 91.1 per cent. greater. Berlin increased 184 per cent. from 1858 to 1885, and Hamburg 131 per cent. Vienna had 132 per cent. more population in 1880 than in 1857, and Buda-Pesth 108 per cent.

The increase in the annual expenditure of cities is equally striking. Even in 1881, Berlin's annual expenditure had reached the sum of \$11,000,000, while London spent annually upwards of \$56,000,000, and Paris over \$51,000,000. According to the United States census for 1890, the annual expenditure of Boston was \$16,117,043 or \$35.94 per capita, while that of the commonwealth of Massachusetts for the same period was \$4,955,669. "Like ordinary expenditures of the states of New York, Massachusetts, Pennsylvania, Ohio, Missouri, and Illinois, the six largest states in the Union for population, for one year amounted in the aggregate to \$28,859,010, while in the same period the ordinary expenditures of New York City alone amounted to

\$48,937,694." The total annual expenditure of \$235,000,000 given by the census of 1890 for one hundred representative cities of the United States, is far from the real total, as 343 cities are entirely left out of consideration in making the estimate.

But the most marvellous thing about the development of modern cities is, not their growth in population, or even in expenditures, but in indebtedness. The commissioners appointed by the Governor of Pennsylvania in 1877 to investigate the condition of cities, say in their report "that a carefully prepared table, showing the increase of population, valuation, taxation, and indebtedness of 15 of the principal cities of the United States, from 1860 to 1875, exhibits the following results: Increase in population, 70.5; increase in taxable valuation, 156.9; increase in debt, 270.9." Probably this ratio of indebtedness would not hold true of the cities of Europe, but still, Berlin, in 1881, had an indebtedness of about \$28,000,000, Paris of over \$420,000,000, London of \$100,000,000, Liverpool of nearly \$110,000,000, and New York of over \$120,000,000. The total municipal indebtedness of the United States in 1880 was \$684,348,843, and in 1890, \$723,950,876—an increase of nearly \$40,000,000 within the last decade,—while the indebtedness of the United States decreased over \$1,006,000,000, and that of the states and territories over \$67,000,000, in the same period.

If we should attempt to trace out in detail the process by which cities have come to their present status, we should find that the municipalities of every country have had their own peculiar history, and that it is difficult, if not impossible, to find any one law that has determined their course of development.

Almost all the cities of antiquity had their origin in

the desire of the early tillers of the soil to have some elevated spot near their flocks and farms enclosed by a wall where they could congregate their families and herds in time of danger, and combine together for a common defence. Within this wall they erected their temples, there they built their theatres, there they established their government, and there more and more they located their homes. Thus it came about that the city was the government and the surrounding country was tributary to the city. It often happened that as these cities grew in influence and power they extended their sway over vast territories, and even across distant seas.

The nations of antiquity were not nations in any such sense as Germany or France is a nation. Babylon was not the capital of the Babylonish empire, or even Rome of the Roman empire, as London is the capital of England, or Washington the capital of the United States. All the territory of the Roman empire was tributary to the city of Rome and to its institutions. When it fell, the empire fell also.

The first country to obtain municipal freedom after monarchies had established their sway over Europe was Spain. This was owing to the poverty of the king, the weakness of the nobles, and the constant fear of the Moors. The chartered towns made treaties with the king, by which the former obtained fixed laws, extensive territories, and the choice of their own magistrates, while the latter received in return tribute and military service. The destruction of this freedom was soon brought about, however, by the claim of the knights to a monopoly of office and by the increase in the power of the crown.

Though the conception of the borough as it now ex-

ists in England was copied from the Roman municipium, yet "the English municipalities are in no sense a legacy from the imperial times." Almost all the English towns were destroyed at the time of the Norman Conquest, and many of them are known to have lain waste for centuries. In the middle ages the guilds for the most part controlled the cities. They furnished the militia of that period, and defended the city both with men and money from hostile attacks. These guilds were in constant conflict with their feudal lords; and the king, wishing to weaken the power of these lords, sided with the cities. Edward I., in order to get the money he needed as a free gift, caused two deputies to be sent from each borough to Parliament to consent to the plans of himself and his council. In the reign of Elizabeth, however, the municipalities had become so powerful as to threaten even the prerogatives of the crown. The decision was therefore extorted from the judges that the election of officers for these municipalities should be put into the hands of a select class, instead of the whole assembly. As a result of this and other changes, English municipal corporations down to the great reform act of 1835 were close corporations, and for many generations the cities of England experienced all the evils of being governed by a self-perpetuating council. This reform act of 1835 confers the franchise on the owners and occupiers of property within the borough. They elect the councillors from whom are chosen the mayor and aldermen. The councillors hold office for three years, one third of their number being annually renewed by ballot. The reforms in England that swiftly followed this act of 1835 for the regulation of municipal corporations were repeated in Scotland and Ireland, and their



municipal systems were reconstructed under similar schemes. But the Consolidation Act of 1882, after half a century of legislation, swept away all former acts, and has already proved a great boon to municipal officials. All the large towns of England are now obliged to have a similar organization, and only in case of certain special needs can they appeal to Parliament for additional privileges.

There is little in the development of the German cities that resembles that of the cities of England. The free cities were first divided between the emperors and their immediate vassals. In the twelfth century councils began to be elected by the citizens, who in the thirteenth purchased full powers or drove out their vicars and bailiffs by force. After the overthrow of the Hohenstaufen family the German cities were enabled to break loose from their lords and hold directly of the empire, and finally they were admitted to the Diet on equal terms with the rest of its constituents.

When we turn to the United States we also find that its municipalities have a history quite unlike that of any other nation. In the United States municipalities are regarded as a subordinate branch of the state government. They are the creatures of the state, made for the specific purpose of exercising within a limited sphere the power of the state. If the state sees fit it may take away a city's charter and govern it as it governs the state at large. It may expand or contract the powers of a city, or destroy its corporate existence altogether. While we speak of city charters, it is clear that the weight of judicial authority in this country has crushed out all charter rights or special privileges on the part of the city ; that the laws organizing a city government are precisely like other legislative enact-

ments, subject to modification, change, or repeal, as the will of legislatures may direct ; and that cities may be created or extinguished, as the legislative body of the several states may determine. A striking illustration of the extent to which an American legislature may be willing to go is the case of Cincinnati. The Ohio Legislature authorized that city to expend from eighteen to twenty millions of dollars in building a railroad three hundred miles long, across the states of Kentucky and Tennessee, to Chattanooga. Only one station on the road is in Ohio. On the other hand, the city of Memphis for several years had no charter ; all its business and government were carried on by a commission appointed by the commonwealth of Tennessee. Although there exist important constitutional limitations upon this legislative authority in many of the American commonwealths, still there are with us no close corporations, such as were the cities of the Middle Ages, and no independent and sovereign existences, like the cities of antiquity. American municipalities cannot make binding contracts with the state. They can simply discharge the duties and perform the service imposed upon them at the option of the state.

From this brief outline of the development and character of the principal municipal governments of the earth, we see that no one system is common to them all ; that the relation of the State to the municipalities within its borders has greatly varied with its own form of government and its own peculiar conditions. Municipal government in Great Britain, for example, is not administered on the same theory as in America, nor is Paris governed in the same way as Berlin.

This is as it should be. The genius of each nation should work out its own methods of local government.

While the State should never give up its rights to the supreme control of the localities within its territorial limits, it should allow to each locality that degree of self-government that is consistent with the good of the State as a whole. The State should never unalterably fix upon a method. It should change its method whenever the public good requires. In nearly all civilized lands they proceed upon this principle. They endeavor to keep pace with the change in local conditions. They allow the localities to possess and exercise all the power that the efficient administration of their affairs requires. They have ceased to regard the municipal government as exclusively a political organization and have come to look upon it as largely a business corporation, formed to conduct purely local affairs. The success of the arrangement wherever it has been adopted is beyond reasonable question.

In America, however, we have clung, from the first, tenaciously to the doctrine that the municipality is simply a subdivision of the government of the state; that a town or city could do nothing except by the authority of the state, and, if it wished in anyway to change its form of government or enlarge the sphere of its activities, it must first of all obtain the permission of the state.

Probably no man in the United States has studied more carefully the practical results of this system than Andrew D. White. In *The Forum* for December, 1890, he begins his paper on "The Government of American Cities" with these words: "Without the slightest exaggeration we may assert that, with very few exceptions, the city governments of the United States are the worst in Christendom—the most expensive, the most inefficient, and the most corrupt. No one who has any

considerable knowledge of our country and of other countries can deny this."

He attributes this condition of affairs to the "evil theory" that a city is a purely political organization, having to do with general party issues, and contends that the questions a city has to consider are by their very nature non-political, relating to the repairing and lighting of streets; to the erection of public buildings; to the supply of water and proper sanitary arrangements; to the control of the franchises, and the like. The reason why the cities of Europe are so much better managed than our own is, he says, because they long ago abandoned the notion that a city is a political body, and have acted ever since on the principle that a city is solely a business corporation, with which national issues have nothing whatever to do. The American system of city government, in his opinion, has always failed, and always will fail. "Various forms of it were tried in the great cities of antiquity and of the Middle Ages, especially in the mediæval republics of Italy, and without exception they have ended in tyranny, confiscation, and bloodshed."

An equally distinguished expert in the matter of city government is the ex-mayor of Brooklyn, President Seth Low. In his paper on "The Government of Cities in the United States" he says: "The old idea in American communities was that safety is to be found at the hands of government through the division of power. As applied to great cities it is not too much to say this idea has broken down completely. One reason for the breakdown clearly is that the work of the city is in fact business more than it is government. . . . It has been demonstrated over and over again that under any conceivable division of power there has been

power enough left to do harm, even though there has not been sufficient positive power anywhere to accomplish much good. . . . So long as the city chooses its own officials on party lines, it must expect to have officials with whom the interests of the party is first and the welfare of the city is second. It is not reasonable to suppose that men who, as candidates, have found the citizens themselves completely indifferent to the city, but warmly interested in the party success, can, as officials, successfully adopt and act upon precisely the opposite view. The best city government is not to be had until in the minds of all officials the city is the first thought."

Ex-Mayor Hart, of Boston, in the *North American Review* for November, 1891, calls attention to the fact that while it is generally conceded that the government of American cities is a failure, it is at the same time admitted by all that our system of national and state governments is a decided success. This leads him to propound the question, "If the national government had the same power over states which the latter have over cities, is it not likely that our states would be in the same predicament in which we find our cities?" The only true way to avoid our present evils is, in his opinion, to bring our towns and cities into the same relation to the state as the state bears to the national government, and to make the constitution of the American city the counterpart of that of the state and nation.

However we may regard the testimony of these experts on this matter, we should not lose sight of the fact that the government of American cities is an American problem, to be solved on the basis of American facts and American conditions. We should not ignore or belittle the fact that in America a city is a

portion of a state. Its right to existence as a city is a state right. All the power that it exercises over the lives and property of its inhabitants it gets ultimately from the state. In order to have any government at all worthy to be called a government, there must be a sovereign unit. This unit is the state. To what extent the state should directly exercise this authority is purely a matter of good judgment. The question as to what the state ought to allow a city to do, or what form of government it ought to allow a city to adopt in order to carry out the purpose of its existence need not in any way involve the liberties of the people or touch any of the rights of citizenship.

The several commonwealths might adopt any one of three courses in their government of cities. They might give to cities complete control of all their local affairs, imposing no restrictions at all upon their power to borrow money, to construct water-works, gas-works, street-railways, or to do anything else they might choose to undertake within or without their own territorial limits, provided only that they did not assume sovereign powers.

They might, on the other hand, allow to their cities little or no self-determining power, but govern them directly by a committee, as they now do their hospitals and prisons. History has abundantly proven that both of these methods are highly injurious to the well-being of the people. American cities, in the beginning, had almost unlimited powers, but the system had to be generally abandoned because, with conditions as they actually were, the "city fathers" could not be trusted with such extensive powers. They often lacked both the intelligence and the integrity to conduct the business of the city in such a manner as to promote the



public welfare. Of course, the ideal charter for a city is a *carte blanche* to do in all local affairs as it pleases, and every city ought to strive to be worthy of such responsibility. But it would be extremely unreasonable for us in America, under present conditions and in the light of past experience, to proceed on that basis.

Equally evident is it that the practical abrogation of governmental powers has not improved the condition of our cities. Naturally enough, the first appeal our dissatisfied inhabitants made for help was to the state. This led to the appointment of state commissioners to regulate municipal affairs. The state legislatures passed laws compelling localities to undertake public works, whether they wanted to or not, and interfered generally in the most minute matters, and of a purely local character. The result was that the corruption that was confined before to cities spread over the whole state, while the cities themselves were in no wise permanently benefited by the change.

A third course that the State might adopt in its treatment of cities is the mean between these two extremes. It might grant to its cities a clearly defined though ample sphere of action, and then leave them to work out their own destiny in any way they saw fit, so long as they kept within this prescribed limit. Such home rule for our American cities is the only rational method. A city in these modern times should be very largely a business corporation, and any business enterprise that does not have the control of its own affairs cannot prosper. As matters now are, no business of any moment can be transacted by our cities without an enabling act of a state legislature. We would not think of hampering a private corporation with such restrictions. Instead of outreasoning and outvoting

our opponents in city affairs, as we do in all other matters, we resort at once to a body of men who, as a rule, pay no city taxes, and have not had the opportunity, even if they have the ability, to acquaint themselves intimately with the complicated problems of modern city life. As a matter of fact, in the country at large, and in almost every state in the Union, the annual taxes, the debts, the public works, and the number of officials in cities far exceed those of the states themselves. The daily life and happiness of the people are far more intimately connected with the local government than the state and national. Yet we give the fullest power of self-direction to the governments that are the farthest away and affect our interests the least, while to the government that comes the nearest and the oftenest to our hearth-stones we allow practically no self-determining power at all.

The first thing, therefore, to be done in the furtherance of better municipal government is to have in every state constitution a prohibition against allowing the legislature constantly to interfere in municipal affairs. Such interference is almost always actuated by purely party considerations or personal interests. If one party has elected the city council and the other the mayor, and the charter says the council shall appoint and remove the officials, the party having the mayor can apply to the legislature to have the charter amended so as to give the power of dispensing patronage to him. If the legislature is of the same party as the mayor, and is confident that the success or non-success of the party in the state depends on the possession of these municipal offices and the control of the annual expenditures, they will probably get the amendments desired. The Tweed tartar obtained

from the legislature of New York in 1870 is an illustration of this method of procedure. It stripped the common council of all legislative functions and of all power of appointing and removing city officials, placing almost unlimited control in the hands of the mayor who had been chosen to that office by the Tweed influence. The result was that "during the year 1870 these public officers of the City of New York stole not less than \$15,000,000 outright, and the amount could not have aggregated less than \$25,000,000 or \$30,000,000. If to the amount stolen outright is added the amount extravagantly and wastefully expended in sinecure offices, the performance of unnecessary work, fraudulent contracts, and what not, it is safe and within the mark to say that one half of the city debt of \$130,000,000 represents absolute plunder." If the state constitution had forbidden any interference on the part of the legislature with the chartered rights of its cities except by vote of two thirds of all the members elected to each legislative chamber and for two successive sessions, as was recommended by the Tilden commission of 1877, such a wreckless waste of the public moneys might have been greatly lessened, if not prevented altogether.

Every one of our states should have a general law for the incorporation of its cities, and after a city has once come into the possession of its chartered rights by compliance with this law, the legislature should be as impotent to interfere with its internal affairs as with those of a bank or a book-store. If a city violates any of the provisions of its charter or disregards any of the statutes of the state, it should be dealt with in the courts just as any other corporate body would be that was guilty of similar misconduct.

It is hard to see why the recommendations of the Tilden commission on this matter of non-interference should not be adopted by every state in the Union. They make the legislature powerless to change the form of organization, to redistribute the powers, alter the terms of office, or in any way effect the local expenditures of a city government unless the board of aldermen and board of finance, together with the mayor, request it ; or in case the city authorities fail to thus agree in their application, making the act requiring such a change receive the sanction of a two thirds vote of two successive legislatures.

With these constitutional limits put upon the power of the legislature to suppress or alter a city's charter, the next most important matter for our states to consider is whether or not they shall prescribe in the charter the form of government. It must be allowed that the sphere of municipal government differs widely from that of the state or nation. Most of the problems it has to solve are purely local and are most intimately connected with the daily life of each family and individual. Obviously, however, it is a great advantage to the state in the administration of its government and to the cities themselves in their mutual intercourse to have in general one common form. It seems reasonable therefore to hold that the state should provide the general plan of government, leaving to the locality the determination of all details.

But there are certain matters in every city that are pre-eminently matters of state. The efficient administration of the state government requires that the necessary officers for attending to these matters should be provided for in every charter. Foremost among these provisions should be a Board of Finance. This board

should be made to work in harmony with the state Board so that the method of taxation adopted by the state shall be carried out in every city, the mode of assessing and collecting the taxes being made one and the same through the entire limits of the state. When a state confers the right to tax upon a locality it is bound to see that the right is not abused, that every member of the state in whatever part of this territory he may choose to reside is not unjustly treated. The best way to do this is through this local Board of Finance whose chief duty it should be to see that the state regulations on this subject are properly observed, and that no local tax is levied that comes into collision with them.

The local Board of Finance should also be required to make an annual report to the state of the city's financial status, so that all may know how near the expenditures have come to the legal limit. No city should be allowed to contract debts exceeding in amount its total valuation, or repudiate its debts by throwing up its charter as some have done in the past and others are likely to do, if left unchecked, in the future.

Provision should also be made in the charter for a Board of Education. The self-preservation of the state and the perpetuation of its institutions require a system of education that shall be accessible and free to all its members. The locality does not educate for itself alone, but for the good of the whole state. The character of the education that is provided for its members should therefore be determined by the state. The local Board of Education should stand in such relation to the state Board that all the requirements of the state shall by means of it be brought to their full realization. An

annual report should be required from this Board of the actual facts.

There should be also in the charter a provision for a Board of Police. In every part of the state there should exist officers empowered with the duty of detecting and punishing crime. No city should be allowed to shirk its task in this matter, nor should it be allowed to throw the burden of apprehending and punishing its wrong-doers upon its neighbors by making easy the way of escape from its own borders to other localities. The local Board of Police should be held responsible by the state for the proper administration of justice upon all those who violate its statutes.

There ought also to be in every city a Board of Health. The care of the public health is just as truly a concern of the state as public education. The sanitary condition of a city is often of far more than local interest; contagious diseases may arise that will sweep away whole sections of the state unless held in check where they originate. The quality of the food we eat, since so much of it comes to us from distant quarters, is also in a large measure properly subject to the inspection of the state. The laws concerning the licensing of physicians, apothecaries, surgeons, and the like should be state laws, and the quarantine regulations should be one and the same for all. Every city should be held responsible to the state for the proper observance of these and all similar regulations for the maintenance of the public health. The local Board should be charged with the duty of making a report to the state Board of the conditions of affairs in this respect as often as the public good requires. If to these four Boards we add a Board of Charities, we have provided for the state all the means that are essential to the



efficient administration of its municipal affairs. No righteous government will fail to make timely and adequate provision for the poor. They have been present in every age and nation in the past and so long as misfortune, sickness, and vice remain upon the earth, they will probably continue. Their proper treatment is not purely a local matter, but primarily a duty of the whole body-politic. The local Board of Charities should act in harmony with the state Board and be held responsible for the proper observance on the part of the locality of the mandates of the whole body-politic.

The exact time for the selection of the members of these Boards and the manner of making the selection need not be prescribed by the state. This may well be left to the inhabitants themselves. No one way of making the choice has been found to be pre-eminently desirable in the past and it will probably not be found in the future. Cities have tried electing their officers on general tickets, on district tickets, and on ward tickets. They have chosen them to serve with pay and without pay. But no system has permanently given satisfactory results. The inhabitants of the city should be left free to change from one system to another as they themselves deem expedient, both as to whom these officers shall be and as to their tenure of service. The state should guarantee to every municipality it allows to exist within its borders the most complete home rule in this matter. But if they fail to use the liberty conferred upon them the state should not be made to suffer. If vacancies as they occur are not provided for, the governor should fill them by his own appointment until they are.

A question of great moment at present is whether a

city should be allowed to manufacture its own gas, own its own water-works, operate its own street-car lines, or engage in any other kind of business when the terms of the charter, fairly interpreted, do not confer upon it the power. The proper answer to the question is that this is a matter with which the government of the state should have nothing to do. It should be left entirely to the option of the city itself. The people of any locality in their organic capacity as a municipality should have just the same right to form a corporation for the transaction of any business as is possessed by individuals. The only limitations that should be put upon their actions are those that are put upon all business corporations. That cities generally pay far more for their gas and water than there is any need of can hardly be doubted ; that they give away the franchises for nothing or a mere trifle when they might realize for them a perpetual revenue of thousands of dollars is equally certain. But this abuse of opportunity is a local matter. The state is not at all responsible for it. Its correction should be regarded as something entirely local with which the state has nothing whatever to do.

If experience has taught us anything it is that with our modern economic conditions the chief function of a city ought to be a business function, that the interests of the people can not be attended to as they ought, unless the city officials make business and not "politics" their chief concern. We may go even so far as to say with President Elliott: "Before municipal government can be set right in the United States municipal service must be made a life career for intelligent and self-respecting young men." But this again is a local affair, not an affair of the state. How cities should govern themselves is not the topic of this paper,

We are considering simply the question, How should the state treat cities? and we answer the question by saying that the state should prescribe the essentials of its form of government so that it may be in substantial accord with its own form and may without unnecessary friction, act as its representative in administering its statutes. In addition to determining the form of government the state should also require each city to establish the local Boards already described as in part adjuncts to its own Boards. But purely local affairs it should treat as purely local. The responsibility for a good local government or a bad government should be made to rest upon the inhabitants themselves. Constant state interference ought no longer to be possible. The people of each locality should be compelled in the main to govern themselves. No local faction should have the opportunity of making a scape-goat of the state whenever they get into trouble, nor should the officers of the state have the power to interfere in local matters whenever they imagine the interests of their party would be advanced by so doing.

## CHAPTER XII.

### THE FAMILY FROM THE STANDPOINT OF THE STATE.

THE three institutions of which every man is born a member are the Family, the State, and the Church. By this I mean that every person is connected by an indissoluble bond to his parents, to his fellows, and to God. Do what he will, he cannot escape from these relations. Fly to whatever corner of the earth he chooses, he is still a member of a Family, a citizen of a State, and a subject of an Almighty Power.

The only way he can break away from the Family into which he first enters is by the formation of a new Family. The only way he can cease to be a member of one State is by becoming a citizen in another ; and no one by any change of place can ever pass out from under the jurisdiction of his Maker.

Strictly speaking there is no such thing as a man without a family, or a man without a country, or a man without a church. But because a man is a man, he may ignore these relations and strive to act as though they did not exist. Yet his conduct will not in the slightest degree affect their continuance, and all his efforts to escape from the obligations they impose upon him will be to no purpose. These three institutions are so intimately related to one another that any injury to one is an injury to all, and any good that comes to

one is shared by all. They rise or fall together. Without the Family there would be no State, and without the Family and the State there would be no Church. If there were but one Family in existence it would be at the same time both State and Church.

The Family is the nursery of the State. The character of the Family determines the character of the State. The more, therefore, the State magnifies the Family the more it contributes to its own elevation and advancement, and the more it belittles the family the more rapidly it hastens its own degeneracy and ruin.

It is a baseless theory of certain philosophers that the State at its first inception had to do with individuals only. On the contrary it found itself in the presence of the Family. The unit it had to recognize at its beginning was an agglomeration of individuals. The Family is not only necessary to the formation of the State, but its continuance is dependent on the continuance of the Family. The Family preserves and developes all its individual members. It cares for their earliest infancy and provides for the nurture of their minds as well as their bodies. Only through the Family can they be fitted for the rights and duties of full membership in the State.

All attempts on the part of the State to abolish the Family or to lessen its significance can only result in its own degradation. Plato, by exclusively concentrating his thought upon the unity of the State, was led in his famous *Republic* to advocate the view that the abolition of the Family would strengthen the love of country and thus be a great blessing to the State. But such an illusion is hardly possible in our time and among a Christian people. The true home is the

hearth-stone of a true love of humanity and the greatest enemy of a cruel and narrow love of self. There one is taught to share his joys and sorrows with others, and to help bear the burdens of the weak. There the habit of devotion is best cultivated, and he who has been taught to hold the Family name most in honor will not be wanting when heroes are called for to place their lives in jeopardy for the good of the State.

It is around the Family fireside that one first gets his conception of human brotherhood without which there can be no just conception of the State. The true way for the State to cultivate the sentiment of fraternity among its members is not by treating them as separate and individual existences. On the contrary it should look upon them as first of all members of a Family, and do everything in its power to develop and strengthen those affections which first originate and acquire their precise meaning in the bosom of the Family. It is not a mere accident that even in the most highly civilized countries, where the opportunities for cultivating the purest affections and pursuing the most unselfish vocations are the greatest and best, the unmarried men and women are ordinarily regarded as the most self-centred and egoistic of all the nation.

The attempts that have been made in history to abolish the Family have always been ephemeral, and, while they lasted, most injurious to the well-being of the State. "The absence of the family," says another, "pitilessly sacrificed, at Lacedemonia, plunged the citizens into the most shameless vices, destroyed arts and literature, and changed a free city into a sort of military convent." The perverted ideas of the Family that were held by the Greeks and Romans exerted a most potent influence in bringing about the dissolution



of the State. The cruelties and vices that were practised by the children as they became in their turn masters of the State, they had first seen exhibited in the ancestral household. The feudal State was the image of the feudal Family. No State at all worthy of the name can ever arise out of the abyss of degradation into which polygamy has plunged the Family of the Orient.

The truly civilized and progressive nations of to-day are those where the Christian conception of the Family is most honored, and where the greatest efforts are being put forth to establish it upon a secure and lasting foundation. For any departure from this conception of the Family involves a corresponding departure from the true conception of the State and hastens its decay and ruin.

Such, then, being the importance of the Family to the existence and welfare of the State, the State can not too carefully guard the formation of the Family or too securely guarantee to those who form it its protecting power. The means for the founding of a Family is marriage; and while the State should encourage marriage in every reasonable way, it should not allow a Family to be formed entirely at the option of the parties. For the public have a right and an interest in the matter as really as the parties. They should first be required to obtain the public consent in order that the establishment of the new Family may be duly recognized and its security and peace fully assured.

From the standpoint of the Church of Rome marriage is a sacrament, and throughout all Christendom it is usually attended by religious rites. But in the eye of the State it is simply a civil contract "evidenced in words prescribed by law, or by law counted sufficient."

Marriage is the union of a man and woman in the legal relation of husband and wife. The institution is one of the leading bases of law, and it is probable that the different systems of law first began to develop around this as a centre. For in some places the old names for "law" and "marriage" are interchangeable. Both history and sound reasoning alike teach us that neither of them are the inventions of legislators, but are both the necessary products of human social life.

Polygamy can not establish a real family. For where maternal rivalry between the children of a common father may come in discord is inevitable. To make the wife merely an uninterested slave destroys the home and annihilates human liberty and family honor. From a political as well as an economic and moral standpoint polygamy is a debasement of marriage and monogamy its only normal and true expression.

The State, therefore, having such great interests at stake in the matter, should regulate the conditions of marriage. It should not allow persons who are incompetent to make any other valid contract to make this. For marriage is the most important and wide-reaching in its influence for good or for ill of all contracts, both upon the individual and the community. The State should not take upon itself the obligation to sustain and defend in its courts any contract the conditions of which it does not itself approve, and it should allow no contract under any conditions to be formed that places the well-being of the body-politic in peril.

It should regard as null and void any marriage effected by fraud or violence. Only on the basis of the free consent and choice of the parties concerned should it give its sanction. For marriage is a double, not a single contract. It is first of all a private contract

between two persons, and then a public contract between the State and the two persons joined. Both are necessary to make a valid marriage.

The State should not permit two persons to marry where the offspring, if any, are almost certain to be a burden to the State. The continuation of the species is one of the prime objects of marriage. A celebrated modern jurist in his definition of marriage makes it the first object. "Marriage," he says, "is the association of man and woman, who unite to perpetuate their species, to mutually help one another to bear the burdens of life, and to share a common destiny!" A childless marriage implies such an abnormal and unnatural condition of things that the State should not recognize it as normal, but should legislate on just the opposite ground. In its laws concerning marriage it should do all it can to advance and perfect the race, and to prevent by all means in its power its deterioration and ultimate ruin. To this end it should not allow the marriage of persons near of kin. For it is found to be almost universally the fact that, where the parents are closely related by blood, the children are physically and mentally degenerate. All nations have found it necessary by positive legislation to put a check upon such incestuous marriages.

It should also prevent the marriage of persons who inherit and would transmit an incurable disease. No private desire, however strong, should be allowed to override the good of the State and the well-being of the children in this matter. No persons should be permitted to bring into the world with the approval of the State those whose lives are almost certain to be passed in suffering and wretchedness and to end in a premature death, or in other ways to be a burden and re-

proach to their fellows. Consumptives, insane persons, incorrigible criminals, and inveterate drunkards clearly belong to this class. Of course there is now and then an exception, but as a rule the physical and mental ability of the child is determined for him by his parents. The State is the only power that can in any effective way guard the natural rights of unborn generations in this matter. The interests involved are so vital to the future welfare of the State that there is always great danger in every generation of giving the subject too little concern.

It is a singular fact that, notwithstanding the existence of the institution from the very dawn of history, it is still an unsettled question both in England and the United States as to what constitutes a valid marriage, whether conformity to the law is necessary or the mere consent of the parties is sufficient. When the validity of a marriage by mere consent came up before the English House of Lords not long ago, a tie vote prevented a decision, and when the same question came before the Supreme Court of the United States, Chief Justice Taney in giving the decision said the given case was decided on other grounds, for "upon this point the Court is equally divided, and no opinion can be given." The trend of decisions in America is, however, in the direction of the conclusion of Chancellor Walworth, "that any mutual agreement between the parties to be husband and wife in *presenti*, especially where it is followed by cohabitation, constitutes a valid and binding marriage, if there is no legal disability on the part of either to contract matrimony." The courts in eighteen states and in the District of Columbia clearly hold that marriage by simple consent, without license or celebration, is valid.

This is not as it should be. It tends to the demoralization of the Family by belittling the importance of marriage, and making it exceedingly difficult, if not impossible, to determine in many cases the actual relation of the parties.

On the continent of Europe they have recovered from their former looseness in regard to the laws of marriage and have begun to realize the idea of family law as an organic whole. They now have a carefully prepared scientific system which in some cases, as in Germany and Switzerland, is the work of eminent professors of law. The legal age of marriage, the degrees of consanguinity, the consent of parents, the publication of intention, the locality of the marriage, and the most careful registration are almost invariably demanded by the present marriage laws of Europe. But in the United States the old Colonial confusion on the subject still continues. We have no scientific or harmonious system. In many states and territories the family may be formed or dissolved in the most careless and irresponsible manner.

It is a noteworthy fact that neither the national nor any state constitution has any provision touching the subject. Only two or three states make any attempt to restrict the marriage in another state of their own citizens contrary to their own statutes. Sixteen states make no provision at all as to the age at which minors may marry. In many states no license or certificate is required. Of these the great state of New York is one.

Only a very few states make marriage registration compulsory, and only twenty-one states require any report to be made to a state officer on the subject. Carrol D. Wright in his "Report on Marriage and Di-

force in the United States" (Feb., 1889), affirms of these returns that they "as a rule, are compiled so carelessly as to be nearly worthless." He puts it none too strongly when he says: "The legal status of parties, their property, the legitimacy of children, are jeopardized in many instances by the reckless manner in which records are kept."

Dr. Mulford, the author of *The Nation*, was so impressed with the need of a radical change in this matter that he did not hesitate to express the opinion that the 16th amendment to the Constitution of the United States ought to be on the Family. He saw, as he thought, that marriage, polygamy, divorce, and other similar problems are so related that nothing short of a constitutional provision will ever meet the exigencies of the case.

Be this opinion right or wrong, it is certainly true that if every commonwealth would compel the registration of marriages, a great gain would be made in a matter of the highest moment to the welfare of all parties. It ought to be possible in this country as in Europe to trace a marriage from its beginning to its end. It is a reproach to our civilization that the evidences of marriage are so wretchedly guarded in almost every state of the Union, and that libels and other papers can so easily be taken from the files of the courts and used in such a disreputable manner for the annihilation of the home.

How the fact of marriage should affect the personal and property rights of the married is a matter of great importance to the welfare of the Family and the prosperity of the State. "There are no regulations," says Kent, "on any other branch of the law, which affect so many minute interests, and interfere so deeply with



the prosperity, the honor, and happiness of private life." Yet in no part of our country are the laws on the subject definitely determined or framed with much reference to reason and justice.

The principle of common law at the basis of many of our present regulations Blackstone states as follows : " By marriage, the husband and wife are one person in law, that is, the very being or legal existence of the woman is suspended during marriage, or at least is incorporated and consolidated into that of the husband ; under wing, protection, and cover she performs everything ; and is therefore called in our law-french a *femme covert*."

The error in this theory is not only in regarding husband and wife as in all respects legally one, but the husband as that one. This feudal idea is, however, a great advance over anything before it in history. In the East from the earliest time a woman has always been the property and slave of her husband. In Greece the domestic tyranny of the husband over the wife was far less than in the Orient, but neither Sappho nor Aspasia, the two most famous women of Greece, had any conception of a home. The Roman matron, it is true, presented a most worthy type of female dignity and virtue, but she was in no sense the equal of her husband.

The feudal system gave to woman the unspeakable advantage of at least a nominally Christian marriage. The spirit of chivalry that it cultivated was in nothing more useful and beneficent than in the profound respect and tender regard that it inspired for woman. But the feudal system fell far short of giving to woman her true place in marriage. In this nineteenth century the world has outgrown the notion that a woman loses her

personal rights by marriage. She should be held subject to the criminal and civil law the same as her husband, and should be allowed to hold and transfer her own property in the married state as before or after it. It is an antiquated notion that a crime of any sort committed by a wife is *prima facie* committed at the instigation of her husband. For it is based chiefly on the medieval idea that a husband has the same right to restrain and castigate his wife as he has a fractious child. The equality of the sexes before the law should hold in our day regardless of the fact of marriage.

Yet the general rule of law and equity that the husband and wife can not be witnesses for or against each other, except in case of personal assault, is a sound one, being founded on the natural bias arising from marriage, and necessary to preserve the peace and happiness of the family. Little can be said, however, in favor of the law that all a wife's personal property acquired before marriage belongs to the husband. This regulation arose when the wife was herself regarded as the property of her husband, and in an agricultural stage of civilization where all personal possessions are comparatively of little value.

Equally unreasonable is the law that a husband should be held responsible for his wife's debts contracted before marriage. The civilized States of to-day should abandon the common-law principle that a woman loses her individuality by marriage. The property owned by either the husband or wife at the time of marriage should remain his or hers, as also any that either may acquire by gift, bequest, devise, or descent afterwards, together with the annual income from the same. The real and personal property of the

wife should be subject to her absolute disposal, by contract, conveyance, or will, and should not be liable for the debts of her husband. Nor should the husband be liable for the wife's debts contracted after marriage except where she may have acted as his agent and with the proper authority. While the husband should be liable for the wife's support, the wife should also be liable for his support if he has no separate property and they have no community property, and he from infirmity is incompetent to support himself.

These regulations, so eminently in harmony with reason and justice, are already in force in most of our western commonwealths, and if they should be adopted by every civilized country on the globe much would be done to strengthen the power of the Family and advance the best interests of the people in their organic relation as a State.

The appearance of the child in the Family at once becomes a matter of solicitude to the State. The parents, of course, are the natural guardians of those they call into being, and the State should hold them responsible for maintaining and educating them during the season of infancy and youth, and for making reasonable provision for their future usefulness. The Family hearthstone is by nature the child's refuge from evil and its consolation in distress. The natural affection of the parents will often impel them to do in the home all that they can to train up the child to become a worthy citizen, and to do his share in promoting the common good. But the combined wisdom of the State should come in to determine what are the essentials of good citizenship, and should alone ultimately settle the question as to how they are to be acquired.

The State should also determine at what age the child may act for himself, and until that age arrives he should be in all ordinary affairs under the control and guidance of the parent, who should be required to supply him with the necessities of life, educate him in the common requirements of the State, and place him in such environment, both physical and moral, as will help him to lead an honorable and virtuous life. If these conditions are conformed with, the value of the services and labor of the child should go to the parent as a compensation in part for the fostering care of its earlier years of helplessness and want, unless the parent in some way consents to the child's receipt and enjoyment of his own wages. The parent should not be bound by the contract or debt of his child, even for articles of necessity, unless an actual authority be proved or reasonably implied. For otherwise an imprudent child might ruin the estate of his parents even without their knowledge. On the other hand, parents should not be allowed to disinherit a child entirely at their own option. It is a relic of barbarism that a father may, at his death, devise all his estate to strangers, and leave his children upon the parish. "I am surprised," said Lord Alvanley, "that this should be the law of any country, but I am afraid it is the law of England." The old Athenian and Roman laws were far more in accord with the equities of the case when they would not allow a parent to disinherit his child from passion or prejudice, but only for substantial reasons, to be approved of in a court of justice.

Equally abhorrent to reason is it that a child should at its own will disinherit his parents. On the contrary, it is the plain obligation of the law of nature

that the children, when of sufficient ability, should relieve and maintain their parents if through sickness or other infirmity they are clearly unable to maintain themselves.

Children begotten and born out of lawful wedlock should be of special concern to the State. Everything should be done by the State that can be done to further the well-being of these victims of illicit passion. The opposition of the English Lords to their being made legitimate by the subsequent marriage of their parents was most inhuman and unjust. Nearly all the nations of Europe allow it, and so do many of the commonwealths of the United States. It should not only be allowed, but be established as a rule of law and equity in every civilized land. No child should be left by the State, if it can possibly be avoided, to grow up into manhood or womanhood without the care and cultivation of a home.

Such being the conditions upon which the Family should be formed, and the regulations that should be conformed to in order to make a marriage valid, and such being the consequences to the respective members of the Family that should follow, we come next to consider a phase of our subject that perhaps in our day transcends in importance all others, namely, upon what grounds and conditions may the Family righteously be dissolved. It is a well-established fact that where marriage is most easy and unrestricted there divorces most abound. In heathen lands release from the conjugal tie was often granted on the slightest considerations. Among the Romans marriage was looked upon as little more than a conventional union to be continued only so long as it suited the mutual convenience of the parties. But what Christianity has

done to elevate and ennoble the Family has helped more than any other influence to make the dissolution difficult. The Emperor Constantine was the first to prohibit the disruption of marriage by the simple consent of the parties. It was not, however, till after the decree of the Council of Trent in 1562, declaring marriage indissoluble for any cause but the death of the parties, that a uniform law on the subject was established. Most countries which are in the Roman Catholic communion still continue this rule, although separation for a number of causes they do not hesitate to sanction. But Protestant nations have generally abandoned the rule, and now greatly differ among themselves in their laws concerning the whole subject.

Excepting the commonwealth of South Carolina, where no divorce law exists, the legal causes for absolute divorce vary in the different commonwealths of the United States from one to fourteen. Taking the whole of the nation into consideration, the total number of causes is forty-two. In Tennessee a refusal on the part of the wife "to remove with her husband to this state" is a valid cause for an absolute divorce, and in Florida "habitual indulgence in violent and ungovernable temper."

Within the last twenty years most of the countries of Europe have greatly increased the number of causes for which both absolute and limited divorces may be obtained. France from 1816 to 1884 granted no absolute divorces or divorces *a vinculo matrimonii*, but now even previously granted limited divorces may be made absolute. In Austria and Ireland jurisdiction has recently been taken from the ecclesiastical courts and given to the civil courts, and now absolute divorce is allowed to all their subjects except to members of the



Roman Catholic church. The laws of France, Germany, and Switzerland now permit absolute divorce for a number of causes even to Roman Catholics, making no distinction on account of religious belief. In 1875 perpetual separation was abolished throughout the German Empire, and the causes that had formerly authorized such separation from bed and board were made causes for absolute divorce.

In America the practice in regard to divorce varies greatly with the different commonwealths. "In several of them," says Kent, "no divorce is granted but by special act of the legislature, according to the English (former) practice; and in others the legislature itself is restricted from granting them, but it may confer the power on courts of justice. So strict and scrupulous has been the policy of South Carolina, that there is no instance in that state (except during the negro rule of 1872-8) since the Revolution of a divorce of any kind, either by sentence of a court of justice or by act of the legislature. In all other states divorce *a vinculo* may be granted by courts of justice for adultery. In New York the jurisdiction of the courts as to absolute divorce for causes subsequent to marriage is confined to the single cause of adultery; but in most of the other states, in addition to adultery, intolerable ill-usage, or wilful desertion, or unheard-of absence, or habitual drunkenness, or some of them, will authorize a decree for divorce *a vinculo* under different modifications and restrictions."

The result of this legislation in the countries of Europe and America is well illustrated by the divorce statistics for 1886, the latest available. In that year the total number of divorces granted in Ireland was 7, in England and Wales 372, in Russia 1196, in the

German Empire 6078, in France 6211, and in the United States 25,535.

“From 9937 divorces granted in the United States in 1867, the total has reached for 1886 25,535, an increase of nearly 157 per cent. in twenty years. The population of the United States probably increased about 60 per cent. for the same period.” The total number of divorces granted in the United States during this period was 328,716. Of these 139,382 were couples with children, whose lives and interests were most materially affected thereby. Desertion was the cause assigned for 126,676 of these divorces, and adultery for 67,686.

It is also to be noted that where divorces are the most numerous there the number of illegitimate births most abound. According to Mulhall the percentage of illegitimate births to total births in Greece is 1.6, in Ireland 2.3, in Russia 3.1. In Spain, Portugal, and Italy the average is 6.1, while in the United States, France, Germany, Scotland, Sweden, and Denmark it varies from 7.0 to 11.2. The statistics for 1887 do not materially differ from these estimates.

Certain it is that present legislation does not tend to diminish the evils of divorce and illegitimate births, but to increase them. Most conservative critics estimate the number of divorces granted in the United States during the year 1896, among the Protestant whites alone, at upwards of 35,000.

The remedy for existing conditions must be adequate for the disease, and a long and bitter experience seems to teach us that the only adequate remedy for the State to adopt is the Roman Catholic doctrine that death alone can dissolve a marriage. It may require a groan and a shudder for a good Protestant after so

many centuries of antagonism to accept such a position, but it is a great deal easier for him to reject the doctrine than it is to confute it, either on the grounds of reason or Scripture.

Edward J. Phelps, our ex-Minister to England, in *The Forum* for December, 1889, after carefully reviewing the present status of divorce in the United States, says: "I venture to suggest, as the result of a long observation of judicial proceedings in this class of cases, that the remedy will be found in the entire abolition of the sort of divorce that allows parties, or either of them, to marry again. . . . The question is not whether divorce laws shall exist, but whether they shall permit the divorced parties to remarry. Here, it is believed, will be found the main-spring of the whole mischief. If that right were taken away, nine tenths, perhaps ninety-nine hundredths, of the divorce cases that now crowd the calendar of the courts and pollute the columns of the newspapers would at once disappear. In the vast majority of instances the desire on the part of one or the other or both to remarry is the foundation of the whole proceeding."

It is the opinion of competent judges that even with the present facilities for obtaining divorce only a few comparatively are just. The vast majority are either collusive or fraudulent. Nor is it possible, so long as divorce is granted at all, to prevent it. Divorce is not at the discretion of the court. It is the legal right of the parties who establish the facts prescribed by the statute, and the court is obliged to decide the case purely on the *prima-facie* evidence so long as no defendant appears to rebut it. The defendant may fail to appear because he wants the divorce allowed with as little investigation as possible, or because he knows

nothing about the trial. In the latter case, of course, the divorce is illegal, but the expense and litigation necessary to set it aside are generally sufficient to prevent its reversal. "There is not a married pair in the United States," says a high authority, "capable of locomotion who could not, if both should concur, obtain a divorce under existing laws without committing any crime that could be legally exposed or punished."

The only real objection to the abolition of divorce *a vinculo* by the State is the hardship it will impose in a few cases upon those who desire to remarry. For by liberal legislation regarding separation from bed and board for all cases of actual need all other reasons for granting such a divorce are of little moment. We must bear in mind, however, that laws are not made for special cases but for the general good. If they serve this end we have no right to call their general utility in question.

If the State should once adopt the policy of granting an absolute divorce to the injured party for adultery even, it could not restrict itself to that alone, at least in America, but must in practice, if not in form of law, go still further. For if the guilty party is denied remarriage in one state, all he has to do is to go to another state where there is no such provision. And it is an almost universal rule that a marriage good where it is celebrated is good everywhere. That Congress, if it should be given the power, would enact and enforce a general law making such a marriage impossible when the individual states do not sanction it, is more than we have any right to expect.

Furthermore, regarding marriage purely as a civil contract, as we do in this chapter, and waiving all the considerations that might be presented from the higher

and nobler standpoint of religion, on what ground of right or expediency can the granting of absolute divorce be limited to the one act of adultery? Are there not other and equally heinous crimes that as effectually nullify the marriage contract? In many States, as in England, adultery is not even an indictable offence, and where indictable is rarely punished with severity. At all events, is not the continuance of the nuptial union made as truly intolerable by unmitigated cruelty? How can the State justly dissolve the conjugal tie for any cause if not for murderous assault?

It is argued by some that if divorced people are compelled to remain single they will often become immoral, and in that way do far greater injury to the body-politic than if allowed to remarry. But Professor Phelps, speaking of the condition of affairs in America, does not hesitate to affirm that "all experience is to the contrary. Certainly among women the exceptions to strict morality will not be found so numerous in single as in married life. . . . It is notorious that the desire to be rid of a relation that has ceased to be pleasant, leads many a man, and not a few women, to conduct either intended to bring about that result, or recklessly entered upon in the feeling that if it takes place it will not be unwelcome."

Chancellor Kent was of the opinion that in many of the cases upon which he was obliged to act judicially adultery was committed by the husband for the very reason of getting the divorce. We have already pointed out that illegitimate births are far more numerous in countries where divorce is easy than where it is difficult or not to be had at all. Those who have paid great attention to the subject assert that in all lands immorality increases as divorces multiply;

that instead of checking one another, the historical fact is that they act as a mutual stimulus.

The permanency and purity of the Family are vital to the welfare of the State. How to attain the one and preserve the other is one of the greatest questions of our modern social life. Gladstone goes so far as to say that "the greatest and deepest of all human controversies is the marriage controversy. It appears to be surging up upon all sides around us." We believe that the considerations already presented make it clear that this controversy will never be permanently settled except on the basis of the inviolability of marriage.

Let ample provision be made by the State for limited divorce for a great variety of causes. If one of the parties becomes idiotic, or insane, or criminal, every incentive should be held out to induce a separation. And so, too, if one of the parties becomes an habitual drunkard. Everything should be done to develop a strong sentiment in the community that to continue the union under such circumstances is a base prostitution of one's powers and an outrage upon the generation to follow. Separation *a mensa et thoro* should be granted for cruel and inhuman treatment of any sort ; for neglect or refusal to support in a suitable manner ; for desertion for a considerable period ; for indignities to person ; for reasonable apprehension of bodily harm ; in short, for anything and everything that effectually destroys the prime objects of marriage. Let liberal provision be made for the comfort and support of the innocent party. But never make the dissolution absolute. Eliminate collusive and fraudulent divorces by this method and you will reduce the number of divorces to a minimum. Take away from all the opportunity to remarry and you have plucked up the evil by the



roots. Experience has shown this to be true in the past, and there is every reason to expect that it will be true in the future. The State errs to its own hurt in so far as it departs in its laws of marriage from the formula made venerable by time and confirmed by universal experience, "for better for worse, for richer for poorer, in sickness and in health, till death them doth part."

## CHAPTER XIII.

### THE STATE AND THE CHURCH.

IN a book written nearly two thousand years ago by a heathen of Bœotia, in ancient Greece, we read these words: "Go over the world and you may find cities without walls, without theatres, without money, without art; but a city without a temple, or an altar, or some order of worship, no man ever saw."

This statement is as true in the last quarter of the nineteenth century of the Christian era as when it was first uttered, and no one at all familiar with the results of modern investigation and research can reasonably call it in question. Even the cannibals of Southern Africa, the most degraded, perhaps, of all the races of men, carry their fetishes with them in all their undertakings, and hide them in their waist-cloth whenever they are about to do anything of which they feel ashamed. "There is no need," writes Dr. Livingstone in his Journals, "for beginning to tell the most degraded of these people of the existence of God or of a future state—the facts being universally admitted."

All observation and experience justify the assertion that every man is born a worshiper. He is so made that in the very act of coming to a knowledge of his own existence he intuitively knows himself as related to a higher Power. He instinctively believes

that he is indebted for his existence to this Power, and that he owes to Him the worship and service of his life. It is difficult to overestimate the influence of this religious element in human nature upon the course of history. It is hardly too much to say that it is now, and always has been, the most important single factor in determining the progress of mankind. "As an historical fact," says another, "nations and governments and religions have everywhere a connection, not only most intimate, but which has thus far shown itself indissoluble. If we look more closely into this historical fact, we find that the controlling element in their connection has ever been the religious one. Nations and governments have not formed their religion, but their religion has formed them." In other words, the more fully men realize their relation to God as their common Father, the more clearly will they recognize their rights and duties to one another as brethren and thus discover the only secure foundation upon which to ground the State.

In one sense of the term every human being is as truly a member of the Church as of the Family or State. For every person is by nature related to God, as well as to his parents and his fellows. In this sense the Church is one and indivisible and includes every human being. Like the Family and the State it cannot be created to-day and destroyed to-morrow, and like them it is of divine origin. For man is so made by his Creator that whether he will or no he must be a subject of the divine government as well as of the human.

In another sense of the term the Church is manifold. There may rightly exist in the world as many individual Churches as the good of the universal Church requires. A true Church is found in human history

whenever a community of human beings join together to worship and serve their Maker. Each Church approaches perfection as a Church just in proportion as the idea of a common divine sonship is realized in its members both in themselves and in all their mutual relations. In this sense of the term no Church is permanent. Old Churches should be dissolved and new ones formed whenever the religious needs of man require it.

No civil government can justly ignore the Church, any more than it can justly fail to acknowledge its relation to the Family. To attempt to treat the Church and the State as utterly distinct is as unreasonable as to succeed in such an undertaking is impossible. For "no civil government can stand in the neglect of all religion, and no community can maintain its freedom without a government in some way acknowledging a religion." The chief question before every State is not whether it has any relation to the Church within its borders, but how to determine what that relation ought to be.

Four different answers have been given to this question in the course of history and still have their respective advocates. I. Some hold that the State should be subordinate to the Church and should act simply as the agent of the Church, getting all the authority and power it possesses from the Church and not from itself. "All nations without exception have commenced with this regime. There are none which have not been governed at first by a religious power." As an historical fact, religion has been the only power that could check the wanderings of nomadic tribes and so fix them to the soil as to make them accessible to the demands of a civilized life. That all primitive governments

were theocratic is now established beyond all reasonable dispute. The seventh book of the Code of Manu is devoted entirely to the enumeration of the duties of kings. In India and the Orient from the earliest times religion has been dominant. In the greater part of Europe during the middle ages the Church was supreme over all classes and conditions and kept a strong hand upon civil government.

In the infancy of a nation the dominance of the Church over civil government is undoubtedly a great blessing. Barbarous and undisciplined tribes cannot otherwise be taught a reverence for law and thus made capable of being brought under the yoke of a civilized life.

In the chaos that followed the wreck of the Roman empire, the Catholic church was almost the sole remaining bond of social unity. The bishops were the only persons that commanded the respect of the barbaric hordes that overran the south of Europe.

But what the Church did in the degenerate times of the middle ages, and did wisely and well, it should not of necessity do or desire to do in other times and under other conditions. No one has more clearly or accurately expressed the true position on this point than the great Catholic writer Dr. Von Schulte. In treating of the legitimate objects of the Church in our day, he says: "During the middle ages, we see an infinity of objects drawn into its domain, with which at first glance, it would seem to have nothing to do . . . But it cannot be ignored that its direct action, so far as its end and mission are concerned, has not so broad an aim now, and that consequently no place in things non-essential belongs to it, that none such is necessary or can appear necessary to it, and

that it has no right to such a place. Rather can the immediate and ever-legitimate aim of the Church be this and this only : man in his moral and religious relations. If the Church here attains its object, harmony will of itself follow."

2. Another view of the relation of the State to the Church is that the State is absolute master over the religious beliefs and modes of worship of its subjects as truly as over their secular affairs. When the Religious Peace was concluded at the Diet of Augsburg, in 1555 the assembled princes adopted the direful maxim : *cujus est regio, ejus religio*, the religion of the ruler is the religion of the land.

Neither Melanchthon nor Luther were blind to the evil consequences of this system. "If the courts wish," wrote Luther to his friend Cresser, "to govern the churches in their own interests, God will withdraw his benediction from them, and things will become worse than before. Satan still is Satan. Under the popes he made the Church meddle in politics ; in our time he wishes to make politics meddle with the Church."

The prerogative of the prince to impose his own religion upon his subjects makes him by right the head of the Church and puts the administration of ecclesiastical affairs under the general administration of the country. This continues even to our day to be the law of Protestant Germany. But it is rarely heeded. The German princes have always been, as a rule, far more tolerant than their laws and have allowed public opinion, "which is nowhere so independent in religious matters as in Germany," to guide their conduct. Russia is the only country in which this theory has been put into actual practice. When the patriarchs of Moscow urged on by the Russian bishops, broke with



the patriarch of Constantinople, they sought for many generations to make themselves supreme in the Church; but Peter the Great frustrated their designs in 1791 by declaring that he himself was the head of the Church as well as the State, and he thoroughly reorganized the entire religious system of Russia on that basis. The result is Russia herself. It is a debatable question whether she has a just claim to a place among civilized nations. So long as a man remains a man his morality and piety must stand quite outside the sphere of government, divine or human. True religious belief and worship must ever be the act of a free being, and it is not only absurd, but impossible, for a government to coërcé its subjects to the adoption of any religious system whatever as a matter of thought and life.

3. A third theory concerning the connection of the Church with the State is that they are both sovereign powers and that the relation between them is to be determined by a series of concordats. Concordats have repeatedly been made in China and Japan between the spiritual powers and the emperors or tycoons. In our day in Christian lands they are almost always compacts made between temporal sovereigns and the popes. They have been aptly described as treaties of peace between the civil and religious powers. Their main object is to put an end to disputes that are equally dangerous to both parties, and with very rare exceptions they are the results of a long struggle.

The most famous of the earlier of these compacts was the concordat of Worms in 1122. Henry V. had been to Rome with an army and compelled the pope to crown him emperor and concede to him the right of investiture. When he returned to Germany the pope

revoked the concession and excommunicated him. The long controversy that followed was for the time settled by this concordat in which it was agreed that the emperor should first invest with the sceptre, and then consecration should take place by the Church with the ring and the staff.

Another good illustration of the compromise character of concordats is the famous compact that Napoleon forced upon the representative of Pius VII. in 1801. By this agreement the clergy became subject to the civil power, like laymen, in all temporal matters ; and though the pope had very large powers secured to him in matters of discipline, the appointment to all the bishoprics was retained by the government and all the appointees were obliged to swear allegiance to the republic.

Concordats by their very nature can never be final, for they are based on concessions that are never entirely satisfactory to either of the contracting parties. In all countries where they exist it has been necessary to modify them unceasingly, or replace them by entirely new ones. France, during the present century, has had three different concordats, and many times that number in recent years have been made and abolished in Germany and Austria. The struggle goes on under the regime of concordats in nearly the same form as before their establishment.

No State, if it can possibly avoid it, should ever make contracts of this sort with any outside power. If compelled to do so it should submit to the imposition only under protest, and as a temporary device for warding off far greater ills that would be sure to come to the body politic if it persisted in the endeavor to maintain its right of sovereign power. France, for ex-

ample, may be obliged, in the present condition of affairs in that country, scrupulously to observe the existing concordat in order to continue her present form of government. But the time ought speedily to come when she should throw off all allegiance to any outside sovereign power, and provide in some more efficient and consistent manner for the nation's religious needs.

4. The fourth proposed theory is that the Church and the State are so utterly distinct, their spheres of action are so entirely different, that their absolute separation is the only solution of the problem before us that can be permanent, and can carry us back to the ultimate ground. The simplicity of this solution must be evident to the most thoughtless observer. But its simplicity is its only redeeming feature. All history is against it, and reason is against it. No nation has ever yet been able to get along without religion, and religion has never yet flourished without houses of worship and a properly supported religious service.

The State can no more cut itself off from the Church than it can from the Family. It stands in the same relation to the one as to the other. A recent writer in the *North American Review* advocates the absolute separation of the State from the Family. He claims that the government should not in any way attempt to regulate marriage and divorce, but should leave the matter of the formation and continuance of the family wholly to the pleasure of the parties. Few seriously minded thinkers will, however, agree with him in this opinion. But it is no more absurd a doctrine than the absolute separation of Church and State. Fortunately there is no danger of the doctrine ever being put into actual practice. For its realization is an impossibility.

So long as man remains upon the earth these three divinely established institutions will remain in such intimate and vital relations to one another that any injury to one will be an injury to all, and any good to one will be a benefit to all. It is only in a state of insanity, as at the time of the French revolution, that any people have ever taken up arms against religion, and sought as a body politic to cut themselves off from its benign and civilizing influence.

5. The true relation of the State to the Church is that of mutual helpfulness. They should not act as two antagonistic powers, or two mutually exclusive powers, but as two divinely commissioned institutions, both having to do with man, but the one with man in his relation to his fellows, and the other with man in his relation to his Maker. So far as its earthly form of organization is concerned, the Church should be subject to the State, as the only sovereign temporal power; but so far as its religious belief and worship are concerned, it should be its own sovereign master.

No State can justly ignore or belittle the religious convictions of its members. On the contrary, it should do what it can to bring those convictions into harmony with its own ideas as to what the public good requires. It should foster and encourage the practice of that religion whose teachings concerning the nature of man and his relations to his fellows most fully accord with its own conception of those relations. Neither the Mohammedan nor the Buddhistic religions are founded on ideas that harmonize with the true conception of the State, and therefore the State should not encourage the existence of their sway over its subjects. The only religion whose teachings accord with the conception of the State as an organic brotherhood is the Christian

religion. Wholly on that ground is the State justified in furnishing, in some way, the necessary means for obtaining instruction in the principles of this religion, and full opportunity for worshipping in accordance with its dictates to all who may desire.

Every modern State ought to be a Christian State. By this we do not mean that every State ought to be ruled by a hierarchy according to the teachings of the Bible, or according to religious tradition. For this would be wholly antagonistic to the idea of Christianity, and at war with the historical development both of the Church and the State. What we mean by the statement is simply that every State should be conscious that the Christian religion is the religion of its people, and it should live up to, and act upon, this consciousness. It should recognize the fact that Christianity is a fundamental condition of its own development, and "is not only the basis, but the living element of our civilization." We can not too strongly insist upon the importance to the welfare of the State and the efficient administration of government, of keeping alive among the people a strong faith in a personal God, and his righteous government of the universe. For without this faith the spiritual bond that binds all men together as brethren would be broken, the very foundation of government would crumble into pieces, all unity in the order of the world would be lost, and the inevitable result would be anarchy and chaos.

No writer has more accurately or more truthfully described the relation of Christianity to the development of the modern State than the great Bluntschli, who summarizes its beneficent effects in substance as follows: 1. It has awakened among the people a high sense of human dignity and honor. Since the time it

first taught men to regard themselves as children of a common Father, the value of human life has been held in far higher esteem than ever before in human history. 2. By the doctrine of the fatherhood of God it has brought men to a consciousness of their equality and fraternity in relation to one another. Acting as a liberating force upon all, even on the lowest class, the slaves, it gave a new foundation to the liberty of all, and has transformed the face of Europe. 3. It has put a legitimate restraint upon the power of monarchs by reminding them of their accountability to the Supreme Ruler, and by demanding of them that they should respect their subjects as their brethren in Christ. 4. It has revealed the affinity of all the races of the earth, and by opposing the narrow spirit of sectionalism with its doctrine of the unity of the human species, it became the source of a higher and nobler conception of the moral principles that should regulate the intercourse of nations, and thus laid the foundations for the eventual civilization of the world.

“In proportion as nations come to understand human nature,” Bluntschli continues, “they will respect the religion which has guided them in their intellectual advance, and infinitely promoted their civilization. On this account the State, although now conscious of itself and grown independent, will, in the future, take into consideration the moral demands Christianity may make, and, so far as its laws and power permit, try to grant them. The religion of mankind and the politics of mankind—each adhering to its own principles—will continue in close and friendly reciprocal relations, and thus united they will best promote the welfare of the human race.”

In the light of these considerations it is not difficult



to see that the question of an "established religion" is merely a question of expediency to be settled by each generation as the need of the people may require. The position taken by one State on this matter in one set of circumstances is not, of necessity, a standard for another State in a different set of circumstances. For whether the religious wants of a community can be better satisfied by the direct action of the government, or by the system of private management and voluntary support, is not a question that alone by itself admits of a positive answer. Sometimes the former method should be followed, sometimes the latter. The customs of the people in similar matters, their past history, and all the present attendant circumstances, should be taken into consideration before coming to a final decision. If, for example, the property of the country has become concentrated in the hands of a few, and the mass of the people have not the means to build churches and support pastors, the government should raise the revenue needed by a direct tax. Means for the maintenance of religious instruction and places for worship should in some way be provided by the people. If it can not be done, or will not be done, by voluntary contributions, the government should not hesitate to act in the matter, any more than in providing instruction and discipline in anything else that is of importance to the welfare of the State. Nor is there any reason, in the nature of the case, why religious instruction and opportunity to worship should not continuously be furnished by the government, if it is the general desire of the people to have the matter attended to in that manner.

The possible disadvantages of such a system are obvious: it might tend to minimize the importance of

religion as an individual matter, and to check the independent growth and development of religious sentiment. It might result in putting a premium on deception as to one's religious convictions for fear of incurring the displeasure of the government. It might lead some to array themselves against the government for compelling them to help support an institution in which they had no personal interest.

But it also has its possible advantages. Being obliged, from the nature of the case, to recognize and foster religion, it might, by selecting a particular form, give greater definiteness to its support of religion than would otherwise be possible. It might often use the clergy directly, if necessary, for the furtherance of its own purposes. It might secure by this method a far higher degree of general religious culture.

Every State in deciding on its course of action in this matter, as in every other, should take into consideration all the data of the case, and do whatever in its own judgment, in the given conditions, best conserves the good of all.

Of course, no State is justified in taking the position that any one way of fostering religion is absolutely the best way, or that any one form of church government is absolutely the best form, even though it should claim that the Christian religion is actually the only religion in history that teaches ideas that are consonant with the true conception of the State. For evidently there may be in a Christian State many different ways of looking at the Christian religion, and as many forms of church government as there are forms of civil government. Because a given form was beneficial to the religious progress of mankind in one age and country under one set of circumstances, is no suffi-

cient reason that it will continue to be so when the conditions are wholly different. Nor should a form that failed to work well in an early period of history be wholly discarded for that reason in a later. The people of each generation have the same right to change the form of their church government as the form of their civil government. And the State ought to allow and sanction the change whenever the ends for which the Church exists among men will be best promoted by so doing.

The framers of our national constitution undoubtedly voiced the will of the people of the United States when they inserted in the first amendment to that document the clause: "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof." The ground of the opposition to this amendment at the time of its adoption was not at all the policy of the government regarding an establishment of religion, but the need of any such amendment, as no one thought of advocating any other policy. Livermore of New Hampshire unhesitatingly declared, concerning all the amendments, that they were "of no more value than a pinch of snuff, since they were to secure rights never in danger." This clause in our national constitution, however, does not prevent any of the separate states from passing any laws they please "respecting an establishment of religion," or treating the religious beliefs of their subjects in any way they may desire. The framers of this amendment were not indifferent to religion themselves, nor did they wish the United States to be so in the future. "Probably at the time of the adoption of the constitution, and of the amendment to it, now under consideration," says Judge Story in his *Exposition of*

*the Constitution*, "the general, if not the universal, sentiment in America was that Christianity ought to receive encouragement from the state, so far as was not incompatible with the private right of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation."

It was clearly not the purpose of the makers of the constitution to countenance the introduction of Mohammedanism, or Buddhism, or even infidelity, "but to exclude all rivalry among Christian sects, and prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government." Every American colony, with the possible exception of Rhode Island, from its foundation down to the time of the forming of the constitution, had openly supported some form of the Christian religion. And this amendment was adopted for the purpose of leaving the subject of religion exclusively to the separate commonwealths. At the first test case before the Supreme Court "the decision was the constitution contained no clause guaranteeing religious liberty against the several states which might make such regulations on the subject as they saw fit." Nor does the constitution contain any clause prohibiting the national government from deciding what forms of religious belief it will tolerate, and what forms it will not. "In deciding the Mormon cases," says Justice Miller, "the Supreme Court held that the pretence of a religious belief in polygamy could not deprive Congress of the power to prohibit it, as well as all other offences against the enlightened sentiment of mankind."

Many of the separate states have adopted constitutions limiting the action of their respective governments even more stringently than Congress is limited by the clause already quoted. Art. I., sec. 3 of the constitution of New York begins as follows: "The free exercise and enjoyment of religious profession and worship without discrimination or preference, shall forever be allowed in this state to all mankind, and no person shall be incompetent to be a witness on account of his opinions on matters of religious belief." The constitution of Wisconsin is probably more stringent on this point than that of any other state in the Union. Besides the clause against "sectarian instruction" in the public school, the constitution provides: "(1) The right of every man to worship Almighty God according to the dictates of his own conscience shall not be abridged; (2) Nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. (3) Nor shall any control or interference with the right of conscience be permitted, or any preference given by law to any religious establishments or modes of worship. (4) Nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries."

These provisions are undoubtedly in the main wise and beneficial in a country made up of so many different races and sects as ours. But, notwithstanding the fact that the word "forever" occurs so frequently in them, they are all subject to amendment or repeal whenever the people, in their organic capacity as a State, desire to make it. None of them, whether state or national, imply an absolute separation of the State from religion, or prohibit the giving of religious in-

struction in our public schools, or elsewhere, if the good of the people requires it. Nor do they in any degree militate against the fact that the United States is a Christian nation ; and, while tolerating all religions that do not tend to subvert the public good, especially encourages and fosters the religion of Christ.

No one, it seems to me, has ever expressed more clearly the position that should be taken by every modern State on this subject than Judge Story in the work already referred to, in which he says: "The right of a society or government to interfere in matters of religion will hardly be contested by any persons who believe that piety, religion, and morality are intimately connected with the well-being of the state, and indispensable to the administration of civil justice. The promulgation of the great doctrines of religion: the being, and attributes, and providence of one Almighty God; the responsibility to him for all our actions, founded upon moral freedom and accountability; a future state of rewards and punishments; the cultivation of all the personal, social, and benevolent virtues;—these never can be a matter of indifference in any well-ordered community. It is, indeed, difficult to conceive how any civilized society can well exist without them. And, at all events, it is impossible for those who believe in the truth of Christianity as a divine revelation, to doubt that it is the especial duty of government to foster and encourage it among all the citizens and subjects. This is a point wholly distinct from that of the right of private judgment in matters of religion, and of the freedom of public worship according to the dictates of one's conscience."

If at any time in the history of a State voluntary associations do not furnish the people with proper re-



ligious instruction and proper opportunities for worship, the State should not be left to suffer. The government, if necessary, should establish and maintain a system that does adequately provide for the public need. The State should always regard religion as a means, not as an end. It should never try to compel its subjects to adopt any system of religious belief, or conform to any mode of worship. But it should furnish to every citizen full opportunity to acquaint himself with the essentials of religion, and grant him, also, every reasonable facility for giving expression to his religious belief in the forms of worship he may most desire.

## CHAPTER XIV.

### THE STATE IN ITS RELATION TO OTHER STATES.

WE have little or no evidence that the ancients had any conception of the brotherhood of nations. The idea that the States of the earth together constitute a great commonwealth and ought to act towards one another as members of one common family had no perceptible influence over their actions or thoughts. The Greeks in their palmiest days knew nothing of a humanity that exceeded their own territorial limits. In regard to all other nations eternal war on the barbarians was the watchword of their conduct. Aristotle went so far as to assert that foreigners were intended by nature to be the slaves of the Greeks. It was the custom of the Romans to annihilate the nations that would not become subject to them, and even when they subjugated Greece they put to death or sold into slavery hundreds of thousands of their captives. Although the ancient Germans often held hospitality sacred, they looked upon foreigners as having no rights and did not hesitate to dispossess the conquered of their lands, and even of their lives, if they so desired. The Jews of early times regarded themselves as exclusively the chosen people and made it for centuries one of the chief objects of their existence to extirpate the communities with which they came in contact.

The idea that all humanity constitutes but one family is chiefly the offspring of Christianity. Jesus, by claiming every member of the human race as a brother, first laid the foundation for a community of States. Historically it was among Christian nations that International Law first began to be developed, and it is through their influence that it is to-day so rapidly extending its sway over every portion of the earth. In the sixteenth century "the Bible and the Institutes of Justinian became the common property of all the more civilized nations of Europe, and brought about the harmony of moral and legal ideas necessary to the international agreement and understanding of states." The Protestant Reformation first rendered possible the realization of the idea of self-dependent States, without which there can be no just basis of international intercourse. For the first requisite of such intercourse is the full and complete recognition of the fact that the jurisdiction of a nation over the persons and commodities within its own territory is exclusive and absolute. This necessarily involves the right of every State to maintain any form of government in any way it chooses, and freely to change it whenever it may so desire. It also implies the right to entrust its sovereign powers to several departments or concentrate them all in the hands of a single individual ; in short, to manage its own internal affairs absolutely unrestrained by any outside power.

In the very nature of the case a large portion of the surface of the earth is beyond the jurisdiction of any State. The high seas, either the whole or any part of them, can not be included within the territory of a State, and therefore by right they are open to all. The privilege of sailing over them or fishing in them belongs

equally to all. The Behring Sea controversy ought not to be settled on any other basis than the clear acknowledgment of this right, whatever may have been the recognized or unrecognized claims regarding the matter in the past. Otherwise a great injury will be done to the true conception of the sovereignty of States, and to the establishment among the nations of the earth of sound principles of international right.

One of the prime duties of a State in relation to other States is the duty of self-defence. "The right of self-preservation," says Phillimore, "is the first law of nations, as it is of individuals. A society which is not in a condition to repel aggression from without is wanting in its principal duty to the members of which it is composed, and to the chief end of its institutions. All means which do not affect the independence of other nations are lawful to this end." In the exercise of this right every State ought to protect its coasts, harbors, and land frontiers in every way that is deemed necessary to secure them from hostile attack. For the same reason it ought to defend the person and property of its citizens from insult and aggression of every sort. The right it claims for itself it should freely allow to every other State. While resenting the invasion of its own sovereign control of the territory and people within its jurisdiction, it is bound to respect the rights of other States. It cannot justly allow its own subjects, or the subjects of any other nation temporarily within its borders, to invade them or use its territory as a basis of hostile assault. The weakness of its government or the insufficiency of its laws is no excuse for failure to discharge this obligation.

By claiming complete immunity from interference in its own internal affairs it takes upon itself the corre-

sponding duty of non-interference in the internal affairs of others. Only emergencies of the gravest character, such as its own self-preservation, the breaking of an important treaty stipulation, or some gross outrage upon humanity can justify any exception to this rule. Interference in behalf of the balance of power can have no just basis unless self-defence requires it or unless unnecessary wars on the part of selfish and unscrupulous States can be prevented by so doing. While it may not be true, as some affirm, that the number of wars fought since the first application of this doctrine by the nations of Europe would have been far less numerous if the doctrine had never been asserted, still it must be admitted that it has often been invoked to perpetuate great abuses of power and prevent the achievement of desirable constitutional reforms. It is a gross violation of reason and right to hold that any nation can justly use force to retard the civilization or lessen the prosperity of its inoffensive neighbors, or check their increase in wealth and population by developing their natural resources and cultivating the physical and intellectual capabilities of their subjects to the highest degree of efficiency and power.

The principle of *ex-territoriality*—that a State may exercise jurisdiction over its subjects beyond its strict territorial limits—needs in no way to collide with this duty of non-interference in the internal affairs of other States. Every State should be responsible for the conduct of the officers and crews of its ships of war wherever they may be, and for its merchant vessels on the high seas. It should punish the crimes committed by its subjects in territory occupied by savages or not claimed by any civilized power, and also the crime of piracy by whomsoever committed and on whatsoever

seas. It would be impossible for the ambassadors and public ministers of a nation to represent successfully their own government, or effectively to interfere in behalf of their fellow-subjects, if they were not regarded as responsible to the home government alone, and entirely free from the jurisdiction of the country to which they are accredited. Yet this very immunity is granted by the governing power of the nation to which they are deputed, and could not exist for a moment without that consent. It is, therefore, no interference with a State's sovereign powers. The principle is universally conceded by all Christian States, and has been generally recognized as valid ever since the first establishment in the fourteenth century of permanent legations in Europe.

Writers on International Law often agitate the question as to whether a State has a right to force another State to intercourse with itself against its desire. That is, should a nation allow another to adopt a rule of strict non-intercourse? We are greatly helped in answering this question by making a clear distinction between political intercourse and commercial intercourse. A State can reasonably be required, for example, to recognize the existence of another State by receiving its ambassador when one is sent to it, by treating humanely the subjects of other nations when they are met with on the high seas, or when some calamity, such as the distress or stranding of a vessel, throws them within its borders. The fundamental importance of political intercourse between States is well expressed by Woolsey, when he says that "there can be no law of nations without it, no civilization, no world, but only separate atoms." The discussion of this point is, however, of little practical moment, as



"no state now assumes, or ever has assumed, such an attitude of complete isolation."

When we come to consider commercial intercourse we have to do with quite another matter. No articles of international trade are by nature so absolutely indispensable to the existence of any State as to justify a resort to force in order to obtain them. If a State may justly adopt a protective tariff of any sort, why may it not go to the extent of shutting out all foreign trade from its borders? It is hard to see why every nation should not be left to decide for itself upon the extent of its commercial intercourse with others. Why should the laws of nations interfere on this point with the will of individual States, any more than municipal law should interfere with the will of individuals?

At one time it was much discussed as to whether China, Japan, and other countries, which had for a long time refused all commercial intercourse with other nations, should not be compelled to open their ports to foreigners, and engage in trade with the rest of the world." "But, as a question of international jurisprudence," says Halleck, "it scarcely merits consideration. No doubt on this point could arise in the mind of any person, except those who contend that the rules of International Law adopted by Christian nations are wholly inapplicable to the countries of Asia. But this opinion, although at one time supported by writers of unquestioned ability, is now almost universally rejected by publicists."

It is a singular fact that no term in International Law is more difficult of definition than the term native-born citizen. For it is impossible to deduce any rule on the subject that is common to all nations. Some, as Austria and Russia, determine the nationality of a

child by the nationality of its parents ; others, as England and the United States, by the place of its birth. But granting that every person by birth owes allegiance to some State, the question arises, Can he ever change that allegiance, or must it remain one and the same through life? The policy of ancient Rome did not allow the possibility of such a change. The title *civis Romanus* was indelible. A citizen might be deprived of his life, but he could not be deprived of his citizenship. The feudal system was equally jealous of native rights, and Great Britain, even as late as 1812, insisted upon the maxim, "once an Englishman, always an Englishman," and treated as traitors native-born Englishmen who had become naturalized in the United States, and had taken up arms against the mother-country.

Until the treaty of 1870 with the United States the English judges uniformly decided that no subject could relieve himself of the duty of allegiance except by the consent of his native country. American jurists have also substantially acquiesced in this decision, but the political departments of our government have always maintained that the right of expatriation was an individual right existing at all times, and capable of being exercised at will. In 1868 Congress passed a law declaring that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness." This act has not yet received judicial interpretation. If taken to mean that a person can justly expatriate himself without the consent of his government after he has arrived at the period of military service without rendering that service, or can by this act justly absolve himself from all responsibility

for his debts and other similar obligations to his country and fellows, it ought not to be sanctioned. It is reasonable that a country that has supported and educated a person until he has become of productive age, should have some claim upon his services if the country needs them, and should have some power in determining the conditions upon which he may abandon the old allegiance and take up a new one.

Every State should, however, take to itself the exclusive right of prescribing the conditions upon which it will admit aliens to citizenship. It may justly refuse under some circumstances to admit them on any conditions. It may justly make the period of residence prerequisite to naturalization long in one stage of its development and short in another. As a matter of fact the period has greatly varied in different countries. France required ten years previous to 1867. Since then only three. A person who renders the nation a great service may be naturalized in one year. In the United States we now require five years, although at one time the requisite period was fourteen. In some respects our laws concerning naturalization are the most illiberal of those of any civilized nation on the earth. Previous to 1870 only a "free white person" could acquire citizenship in the United States. If he were of any other color, no matter what his intellectual and moral attainments might have been, he was excluded from the privilege. Even now all are debarred save free whites and negroes who were born in Africa or are of African descent, the sentiments of the Declaration of Independence and our recent constitutional amendments to the contrary notwithstanding.

When once naturalized an individual should be invested with all the rights of a native-born citizen,

and should be entitled to the same extra-territorial protection. But if he returns to his native country he should there be held liable to all his unfulfilled obligations, and treaties to that effect should be made with every friendly State. He may also renounce his new allegiance and return to the old one or form a new tie elsewhere. If he returns to his native State and settles there with the intention of remaining, he should be regarded as having renounced his acquired allegiance and assumed the citizenship of his nativity. The two-year limit of sojourn contained in many treaties on this subject is most fittingly regarded, if no other declaration is previously made by the individual, as declaring this intent. Under such circumstances the country of his adoption should no longer protect him in the enjoyment of the privileges it demands for its own citizens, but should leave him entirely at the disposal of the country of his birth.

When the state department of the United States instructed its consuls and ministers at the Court of St. James not to interfere in behalf of those Irish-Americans in the Fenian trouble in 1867-8 who relied on their naturalization, which they had practically abandoned, to protect them in their treasonable operations against the English government, it did no violence to the thoroughly American principle that a naturalized citizen should be treated on the same footing as a native-born. It simply recognized the fact that those who violate the law of the land in any civilized country, whether subject or alien, must suffer the consequences, and no appeal therefrom can be tolerated.

There is a considerable difference of opinion among jurists as to whether a State is bound to deliver up to another fugitive criminals,—at least those who are

charged with crimes of excessive atrocity,—on the mere request of the demanding State, or whether it should surrender them only when by a treaty on the subject it has definitely stipulated so to do. Chancellor Kent distinctly affirms that it is “the law and usages of Nations, resting on the plainest principles of justice and public utility, to deliver up offenders charged with felony and other high crimes, and fleeing from the country into a foreign and friendly jurisdiction.” Secretary Seward in 1864 did not hesitate to surrender Arguelles to the Spanish government, although no treaty at that time existed between the two nations, and he defended his action in an able paper on the subject before the Judiciary Committee of the House. He maintained that there was “a national obligation and authority for the extradition of criminals,” and that the exercise of this authority in the case of the United States rested with the President, who should be guided in wielding it by the “heinous guilt against the law of universal morality and the safety of human society, and the gravity of the consequences which will attend the exercise of the power in question or its refusal.” Notwithstanding the fact that the House refused to condemn Seward for this act, Secretary Frelinghuysen in his report for February, 1884, undoubtedly states more correctly the rule of the United States when he speaks of “the long and uniform course of decisions which hold that the President, in the absence of legislation and treaty, has not the power to enforce that doctrine,” namely, the surrender of fugitive criminals. Dr. Wharton sums up the law of the United States on this point as follows: “As a general rule there can be no extradition to a foreign State without treaty.”

This is carrying the doctrine of non-responsibility for crimes committed abroad much too far. Chancellor Kent's position may have been too advanced for his generation, but the rapid increase in commerce that has taken place in recent years, and the ease with which people now pass from nation to nation in almost every part of the world, make the adoption of his views in our time most reasonable and just. Criminals should be made to feel that so far as they are concerned the reign of law knows no bounds. It is wholly opposed to the well-being of society that murderers, robbers, counterfeiters, embezzlers and such-like from any part of the world can in our day find a secure asylum on our shores, or go to any other civilized country and escape their just deserts.

It has been a settled principle in the law of the United States from the beginning of its existence as an independent power that there could be no extradition for political offences. Jefferson, when Secretary of State, gave as the reason for this position that "most codes extend their definitions of treason to acts not really against one's government. They do not distinguish between acts against the government and acts against the oppression of the government. The latter are virtues, yet have furnished more victims to the executioner than the former." It is now more than a hundred years since Jefferson penned these words. Whatever may have been true of them then, it is certainly most unreasonable to hold that they fittingly describe the condition of affairs to-day in any civilized country. It is high time that this hard and fast rule should give way to one more nearly in accord with the present demands of justice and right. Our knowledge of events and conditions in other civilized lands is now so exten-



sive and minute that we have no excuse for not attempting to discriminate between those political offences that are "against the government and those that are against the oppressions of the government." No civilized land should furnish a place of refuge for political assassins. What would have been more abhorrent to the sense of justice of every true American than that the murderers of Lincoln and Garfield should have escaped all molestation by fleeing to Canada or Mexico? They undoubtedly would have claimed a purely political motive for their acts. How could we justly demand them on our principle of no extradition for a political offence? The anarchists and nihilists of Europe are, many of them at least, as ready to devote their own lives as they are the lives of their rulers to the cause of political reform. If after many attempts at executing their nefarious schemes they should escape to our shores, are we justified in refusing to surrender them because their aim is a political one?

As regards interstate extradition in the United States the Federal Constitution reads as follows: "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." This is an excellent provision, and the government should make it possible to enforce it. For although the Supreme Court of the United States has decided that where demand is made in due form, it is the duty of the executive on whom the demand is made to respond to it, yet if he refuses, no power has been conferred on the Federal Courts to compel obedience. Governors of states have repeatedly refused to comply

with such demands. Whenever from personal, political, or any other motives they do not desire the extradition of a criminal, they do not hesitate to prevent it, and no means have yet been devised to deprive them of the power.

Because of the feudal doctrine of indelible allegiance, that an individual always remained a subject of the state in which he was born, the lot of an alien in early times was a peculiarly hard one. For all the personal and property rights he was permitted by his sovereign to enjoy at home he lost whenever he went outside his sovereign's territorial limits. "So soon," says Davis, "as he passed the frontiers, and entered the territory of another State, he was regarded as being without rights. Such privileges of residence and occupation as he enjoyed were held under sufferance only, and could be withdrawn or cancelled at the pleasure of the sovereign in whose territory he was resident." In case of his death in a foreign country his property, both real and personal, was forfeited to the sovereign. At a later date it was heavily taxed when withdrawn from the territory. It was not until the beginning of the present century that these harsh provisions were set aside. Even now in many countries foreigners are not permitted to hold land on the same conditions as subjects. Austria, Bavaria, Prussia, Sweden, and other countries do not accord the right unless on condition of reciprocity. It is only since 1870 that an alien could purchase a freehold in England. Some of the commonwealths of the United States require residence and an oath of allegiance, and others a declaration of an intention of becoming a naturalized citizen.

It is evident that there could be no intercourse between nations if aliens could not demand for them-

selves and their property the protection of the State where they reside. For a State not to grant them this protection when they have been allowed freely to enter its territory is most inhuman and unjust. As another expresses it, "the obligation to treat foreigners with humanity, and to protect them when once admitted into a country, depends not on their belonging to a certain political community which has a function to defend its members, nor wholly on treaty, but on the essential rights of human nature." They should be held to obedience to the laws of the land, and should be punished for disobeying them. Nor should ignorance of the law be allowed as an excuse. For they are permitted to enter the country solely on the ground that they are both able and willing to inform themselves as to its statutory demands.

On the other hand, they may justly be deprived of many of the privileges of the native-born subject. They may, for example, be obliged to pay a residence tax ; they may, if necessary, be restricted in their power of holding land. If they are subjected to special police regulations, there may be no just ground of complaint, and they ought not under any circumstances to have all the political privileges of a citizen. It is a great defect in the political system of the United States that foreigners of only a few months' sojourn in the country, even those who never intend to become citizens of the United States, can in some states vote for all the officers of the state and national governments, including President and Vice-President, on an equal footing with the citizens that are native-born. Unless some way is speedily found to remedy this evil the most disastrous results to our American institutions are almost sure to follow.

It is also a serious defect in our present system that the national government has no power to prosecute in its own courts injuries to foreigners. It ought in such cases to be able to indict the offenders before its own grand jury, to try them before its own courts, and execute the sentence imposed through its own marshal. The Supreme Court has clearly intimated that such legislation would be constitutional, and Congress is open to the severest censure for not having conferred upon the Federal Courts long ago the necessary power. It is hard to see what justification Secretary Blaine had for saying, in the present condition of our laws on the subject, at the time of the New Orleans massacre of 1891 that, "the United States has distinctly recognized the principle of indemnity to those Italian subjects who may have been wronged by a violation of the rights secured by the treaty with the United States of February 26, 1871." For there was no such "principle" recognized by Webster in the case of the attack on the Spaniards in New Orleans in 1850, nor by Bayard in the case of the Chinese at Rock Springs in 1885. Whenever an indemnity has been voted by Congress in these or similar cases it has always been expressly stated that it was a matter of grace and not of right.

As nations advance in humane feeling, and as intercourse between them becomes more frequent and easy, all restrictions on foreigners except political should be reduced to the minimum. When once they have been allowed to establish themselves in the country, "the courts of their domicil ought to be as open to them as to the native-born citizen, for collecting their debts and redressing their injuries."

Domiciled aliens should not, however, be allowed exemption under all circumstances from compulsory

military service. In case they continue to remain in the country in time of war after ample opportunity has been given them by proclamation to withdraw, the government may justly compel them to assist in the national defence. When the United States made such a requisition during the late Rebellion in 1863, the nations affected did not refuse to acquiesce. For "it was regarded," says Webster, "as an established principle that a government might, by an *ex-post facto* law, include in its conscriptions any persons permanently resident in its territory, provided it allowed them reasonable time and facilities for departure on the promulgation of such a law." If an alien by his own voluntary act enters the military or naval service of a foreign power he clearly by the very act forfeits the protection of his own government during the period of such service, and must look for protection to the State under whose flag he serves.

Leaving out of consideration many other matters that concern the intercourse of nations, one of the most imperative duties in our day of every civilized State is the establishment of an international copyright. As Dr. Johnson observes, "there seems to be to authors a stronger right of property than that of occupancy; a metaphysical right, a right, as it were, of creation, which should from its nature be perpetual." And yet in 1530 we have the first instance of copyright granted to an author, and the first law in favor of international copyright was passed by Prussia as late as 1837. For the copyright of Shakespeare's plays neither Shakespeare, nor his children, nor his grandchildren received anything; and the sum total that Milton and his widow obtained for the successive editions of *Paradise Lost* was £18. These two cases illustrate the general

rule, to which of course there are some exceptions, that the demand for the works of the greatest men is not sufficient during their lifetime adequately to reward them for their labors. And unless copyright is made everywhere perpetual, or at least very prolonged, the nations of the earth can not treat even with the show of justice the greatest of their benefactors. No longer ago than 1888 it was truthfully said that "America alone of the principal countries of the civilized world enjoys the unenviable distinction, while her citizens are liable to secure a copyright of their works in Europe, of refusing to grant a copyright to foreigners." For generations what she could easily have obtained with her unbounded resources for a slight compensation she preferred to steal. Many great publishing houses were built up on the proceeds. But when this piracy of the works of European authors became a dangerous calling because of the number engaged in it and the uncertainty of its fruits, the "ethical inertia" of the people of the United States began to give way to a demand for some governmental regulation of the matter. A great advance has yet to be made, however, before a just international law shall become an established fact—before authors and their heirs shall have as complete a control over the books their labor and genius have called into being, as every workman now has in all countries over the product of his hands.

In all ages of the world nations as well as individuals have had their differences, and not unfrequently has it been found impossible to adjust these differences without recourse to brute force. So long as insult and injustice exist among the nations of mankind occasions for war will continue. Only when civiliza-



tion becomes complete, only when humanity reaches perfection in intelligence and virtue, will all provocation to war cease. As there is no authority above a sovereign State to which it can appeal, it is obliged to redress its injuries by its own efforts. But not even when a State has been clearly wronged and the redress asked for has been refused, is it always justified in resorting to war. The bare justice of the case against the wrong-doer is not the sole matter that the rulers of a nation should take into consideration before exposing the people to the ravages of war. "If," says Sir James Mackintosh, "reparation can otherwise be obtained, a nation has no necessity, and therefore no just, cause for war; if there be no probability of obtaining it by arms, a government cannot, with justice to their own nation, embark it in war; and if the evils of resistance shall appear, on the whole, greater than those of submission, wise rulers will consider an abstinence from a pernicious exercise of right a sacred duty to their own subjects, and a debt which every people owes to the great commonwealths of mankind, of which they and their enemies are alike members. A war is just against a wrong-doer when reparation for wrong can not otherwise be obtained; it is then only conformable to all the principles of morality when it is not likely to expose the nation by whom it is levied to greater evils than it professes to avert, and when it does not inflict on the nation which has done the wrong, sufferings altogether disproportionate to the extent of the injury." In every case a resort to arms is justifiable only as a last resort. "Only when war must come is it right to let it come." At the best it is a brute's way of settling difficulties, and as civilization advances it should disappear.

Every effort should be made in our day to prevent war by friendly arbitration. An international tribunal should be constituted to which the States of the earth should agree by treaty to refer their disputes. Even if they were not absolutely bound to abide by its decisions, the moral effect would be most beneficial. The judgment of an impartial tribunal of this sort would undoubtedly have great weight in curbing the passion for war, and would reduce the number to the minimum. The honor of each nation would be preserved, for each had agreed before the dispute arose upon this mode of settlement. The peculiar form of government of each nation would be in nowise affected, and the civilizing influence upon all parties arising from the adoption of such a method of redressing injuries would greatly hasten the coming of an era of universal peace.

The American people have now arrived at a period in their history when international problems are bound to occupy more and more the first place in their thought. The sufficiency of their form of government to solve these problems is sure to be put to the severest test. It is easy to see that a confederate form of government is unfavorable to international intercourse. Under such a system the central government has a large share of international responsibility. But as each sovereignty reserves to itself the regulation of almost all internal affairs, it has not the power to meet this responsibility. Foreign States will not long deal with such an agent. They will prefer to go directly to the separate sovereignties, and will refuse to treat with the central government. The result will be that the separate sovereignties will become independent States, or they will be consolidated, probably by foreign wars,

into one sovereignty with, in many respects at least, absolute powers.

The same result would follow in a federal union such as ours, if the general government kept excusing itself from responsibility for the acts and omissions of the separate commonwealths. Foreign nations would not long tolerate the conduct of a government that assumed full responsibility for the observance of international rights and the discharge of international duties, and then when they were violated declined to punish the offenders on the ground of lack of jurisdiction. Such a government would constantly be exposed to the perils of war if it sought at all to keep up intercourse with others ; and the effect of continuous foreign wars has always been and always must be disastrous to any kind of popular government. The only way to avoid such a catastrophe is for the nation to confer upon the central government the necessary authority to meet all international obligations, and for the central government to invest its courts with ample power to try and punish, regardless of locality, all violations of international right. The objection that at once occurs to such a measure is its centralizing tendency. But a sufficient answer to such an objection is, as another expresses it, "that the only alternative to a moderate constitutional centralization of this nature is, finally, a violent and radical centralization through incessant foreign complications and frequent wars."

The constitution of the United States expressly confers upon Congress ample power "to define and punish piracies and felonies committed on the high seas and offences against the law of nations" ; and the only

thing necessary to place us as a people upon an equality with any other nation in existence in international matters is for Congress to use this power. The power to make treaties is invested exclusively in the President and Senate, and a treaty once ratified becomes the supreme law of the land, with the execution of which no commonwealth has a right to interfere. The constitution has fully equipped the government of the United States with the means to discharge all the obligations that the principles of international law have imposed upon it or are likely to impose. If it will not confer upon its courts and their officers the necessary authority to meet the reasonable demands of foreign powers, it is itself at fault, and not the constitution. It is dishonorable in the extreme for us as a nation continually to set up the plea of inability for our failures to observe treaty stipulations. Nor will the nations of the earth always be appeased for the outrages committed upon their subjects by gifts of money. The remedy for the present unsatisfactory condition of affairs is entirely in our hands. We greatly injure ourselves and retard the progress of civilization by letting the bugbear of state rights longer paralyze all our efforts to apply it.

“When Congress shall have done its duty in this regard,” says Professor Burgess, “when it shall have occupied the ground assigned by the constitution to the general government, then the United States will be fully able to meet and discharge all its international duties. We shall then be compelled neither to humiliate ourselves by answering the just demands of other states with a stultifying *non possumus*; nor to expose ourselves to the danger of confederating the Union by

directing the diplomacy of foreign powers to the commonwealths ; nor to incur the risk of over-centralization as the result of needless wars,—wars forced upon the nation by acts or omissions of one or another of our forty-four distinct governments in matters of international concern.”

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